Payson J. Treat

DS740.4 .W54 1920
Willoughby, Westel Woodbury,
1867-1945.
Foreign rights and interests
in China

Archbishop Alemany Library
Dominican College
of San Rafael

The Gift of
MR. AND MRS. RICHARD DAVIS

THE PAYSON J. TREAT
COLLECTION

FOREIGN RIGHTS AND INTERESTS IN CHINA

BY

WESTEL W. WILLOUGHBY

Professor of Political Science at the Johns Hopkins University:
Legal Advisor to the Chinese Republic, 1916–1917.

BALTIMORE, MARYLAND
THE JOHNS HOPKINS PRESS
1920

ARCHBISHOP ALEMANY LIBRARY
DOMINICAN COLLEGE
SAN RAFAEL, CALIFORNIA

W684f

Copyright 1920 by
THE JOHNS HOPKINS PRESS

J. H. FURST COMPANY,
BALTIMORE

85550

PREFACE

The purpose of this volume is to provide a statement of the rights of foreigners and the interests of foreign States in China as they are to be found stated in treaties with or relating to China or in other documents of an official or quasi-official character. Viewed from the other side, the account will exhibit the limitations under which the Chinese Government is compelled to act not only with regard to matters of international obligation but as to matters which, in countries more fortunately circumstanced, are of purely domestic concern.

Whether the purpose of the volume has been satisfactorily achieved, the reader will determine, but that there is a pressing need for a work that will furnish an explanation and definite statement of the rights and interests which the Treaty Powers and their nationals have obtained in China, few will question. Anyone who has been in China, or has had business interests with that country, or has sought to gain an understanding of the conflict of national interests in the Far East, will testify to the urgency of this need. This is not to say, however, that there are not already books which deal with many of these topics. There are such treatises, and among them, especially deserving mention, are: H. B. Morse's *The Trade and Administration of China,* 2d ed., published in 1913, and his three volumes on *Foreign Relations of the Chinese Empire, 1834-1911;* V. K. Wellington Koo's *The Status of Aliens in China,* published in 1912; T. R. Jernigan's *China in Law and Commerce,* published in 1905; T. W. Overlach's *Foreign Financial Control in China,* published in 1919; and M. T. Z. Tyau's *The Legal Obligations Arising out of Treaty Relations between China and Other States,* published in 1917. From these volumes the author has derived the greatest aid. It will appear, however, that he has explained many matters which are not discussed by these earlier writers, and, of course, there has been opportunity to deal with the important developments of the last few years.

Sufficient has been said to indicate that this volume makes no claim to describe present political conditions in China, nor, upon the side of international law and diplomacy, to estimate the ethical character or practical wisdom of the policies which the several Treaty Powers have pursued in their dealings with China. But the volume will have failed to achieve one of its purposes if it does not supply information from which the reader can obtain an understanding of what these policies have been in the past, and be aided to form an intelligent judgment as to what they should be in the future. As regards, however, this last matter, weight must be given to matters which are not discussed in the present volume. These matters relate to existing domestic conditions in China, and, especially, to the question whether it is likely that China will be able, without foreign aid, to re-establish order in her household and to place her administrative services upon an efficient working basis. Also must be considered the manner in which the several Powers have, in practice, exercised their rights or claims to special interests in China, and weight must be given to the dominant political principles and ambitions of the Powers concerned. Particularly is it necessary that Japan's relation to China should be viewed in the light of these facts. The author hopes that he may later find time to prepare another volume in which these questions can be discussed. He has thought it advisable, however, not to extend the scope of the present volume beyond what has been indicated.

A further word should be said as to the mode adopted for presenting the facts dealt with. The policy has been pursued of quoting liberally from the treaties and other official papers. This has required somewhat more space than a summary in the author's own language would have demanded, but, it is believed, the result will be satisfactory to the reader who will thus be made certain as to the actual language of the documents in question and be enabled to judge for himself whether the conclusions stated in the body of the text have been properly drawn. In result, the student will have, as it were, a handbook to the international commitments of China, and, in most cases, be saved the necessity of resorting to the volumes in which these agreements are set out in full. Of these collections of China treaties there are several, the titles and

scope of which are listed in the note which follows. It will be found that by far the greatest use has been made of Mr. MacMurray's collection, and, in fact, much of whatever merit the present volume may possess is due to the fact that Mr. MacMurray has kindly made accessible to the author the galley proofs of his valuable compilation. All persons interested in the matter of treaties with or relating to China will owe a great debt of gratitude to Mr. MacMurray for the painstaking care with which he has made his collection.

Hon. Paul S. Reinsch, former American Minister to China, and Dr. Stanley K. Hornbeck have kindly spared the time to read the proofs of the present volume, and have made suggestions and corrections which have been of the greatest value to the author.

W. W. W.

COLLECTIONS OF TREATIES WITH OR RELATING TO CHINA

Sir E. Hertslet. *Treaties between Great Britain and China and Foreign Powers.* 3rd Edition, 2 volumes, revised, London, 1908. (Cited as "Hertslet.")

Volume I contains the texts of treaties, 1689-1907. Only treaties in force on January 1, 1908 are included, and where clauses of different treaties are precisely the same or their wording practically identical, they have been given but once. The treaties whose texts are given are gathered into three groups: (1) Treaties between Great Britain and China, 1842-1907; (2) Treaties between China and Foreign Powers other than Great Britain, 1689-1907; and (3) Treaties between Foreign Powers and between Great Britain and Foreign Powers, respecting China, 1896-1907.

Volume II contains acts of the British Parliament, Orders in Council, and Rules and Regulations affecting British Interests in China, 1855-1907, and Miscellaneous Documents, 1877-1907. There is a general index.

W. F. Mayers. *Treaties between the Empire of China and Foreign Powers.* Shanghai, 1877.

This collection, first published in 1877 and for a time out of print, was revised and reissued in 1897. The texts have not been reproduced with conspicuous accuracy, and the collection is not now of considerable value.

W. W. Rockhill. *Treaties and Conventions with or concerning China and Korea,* 1894-1904. Washington (U. S. Government Printing Office) 1904. Cited "Rockhill."

This compilation was prepared as a continuation of Hertslet. In addition to the formal treaties, the texts are given of less formal Declarations and Arrangements, of Mining and Railway Concessions, and of some other miscellaneous documents.

W. W. Rockhill. *Treaties, Conventions, Agreements, Ordinances, Etc. Relating to China and Korea.* October, 1904–January, 1908. Washington (U. S. Government Printing Office, 1908.) Cited "Rockhill, Suppl."

This is a Supplement to the preceding, covering four more years.

The Maritime Customs. *Treaties, Conventions, Etc. between China and Foreign States.* Two volumes, 2d Edition, Shanghai, 1917. Cited "Customs Treaties."

This excellent collection, published by the Inspector General of the Chinese Maritime Customs, contains not simply the full texts of treaties in force, but all those entered into by China from the first one of which there is a record, in 1689, to the date of publication. The treaties are published in their original texts, but usually with English or French translations, in cases in which the originals are in neither of those languages.

J. V. A. MacMurray. *Treaties and Agreements with or concerning China,* 1894-1919. Two volumes. The Carnegie Endowment for International Peace. Washington, D. C., 1919. Cited "MacMurray."

The references are to the serial numbers of the documents, it being impossible to give the page numbers, as the collection was only in "galley" proof at the time the present volume went to press.

These recently issued volumes now provide, for the period covered, the most valuable of all the treaty compilations relating to China, and, wherever possible, will be cited in preference to the other collections. The volumes are compiled upon substantially the same principles of selection as those of Rockhill's two volumes; the documents, however, are not grouped as in Rockhill but are arranged in strictly chronological order. Valuable notes indicate the relations between the several agreements, and an excellent index is provided. In all cases the English text or translation is given.

Mr. MacMurray in his Introductory Note says: "The underlying principle of Mr. Rockhill's collection was his appreciation of the fact that, with the Japanese War, China entered upon a new

course of national development, the history of which is to be read not only—nor even primarily—in the Treaties and other formal international engagements, but rather in the arrangements of nominally private character, with syndicates or firms of foreign nationality, under which the Chinese Government then began to incur a complex and far-reaching set of obligations and commitments, in which the financial or economic element is often merged indistinguishably with political considerations." Hence, as has been already noted, in Mr. Rockhill's volumes are to be found the texts of many mining and railway concession agreements. This character of material becomes even more prominent in Mr. MacMurray's collection.

CONTENTS

	PAGE
Preface	i
Collection of Treaties with or Relating to China	vi

CHAPTER I

Introduction

Difficulty in Determining China's International Commitments	3
Many Agreements not Ratified by the Chinese Parliament	5
Most Favored Nation Clause in its Application to China	8
Chinese Circular of 1878	11

CHAPTER II

Extraterritoriality in China

Trade Conditions Prior to 1842	13
Basis of Extraterritoriality in China	16
Origin of Extraterritoriality	18
American Treaty of 1844	20
Tientsin Treaty of 1858	22
Extraterritorial Jurisdiction Summarized	23
Controversies between Chinese and Treaty Power Nationals	25
Koreans in Chientao, Special Status of	26
Extraterritorial Courts	27
Consular Courts	28
American Courts in China	28
American Consular Courts: Statutory Provisions	29
The United States Court for China	31
His Britannic Majesty's Supreme Court for China	35
The Law Enforced in the Extraterritorial Courts	41

PAGE

The Law of Real Estate in Extraterritorial Courts..... 46
Sources of Law for American Courts in China..... 48
Foreigners as Plaintiffs in Chinese Tribunals — "Mixed Courts" 51
Shanghai International Mixed Court..... 55
Status of the Shanghai Mixed Court Since 1911..... 59
Mixed Court in the French Settlement at Shanghai..... 64
Arrests by Chinese Officials..... 65
Reform of the System of Mixed Courts..... 67
Disadvantages of the Extraterritorial System to the Chinese 70
Disadvantages of the Extraterritorial System to Foreigners in China..... 72
Possible Abolition of Extraterritoriality in China..... 75
Argument of Chinese Delegation at Paris..... 76
Japanese "Police Boxes" in China..... 80
Extraterritorial Rights in Leased Territories..... 87
Appendix A: United States Statutes Relating to Consular Jurisdiction 88
Appendix B: Act Establishing the United States Court for China 96

CHAPTER III

Foreign Commerce and the Rights of Foreign Merchants in China

Treaty of Nanking, 1842..... 103
Tientsin Treaties of 1858..... 107
Treaties of 1902 and 1903..... 108
Specific Rights of Foreign Merchants in China..... 110
Treaty Ports..... 112
Ports of Call..... 115
Limits of Treaty Ports..... 115
Peking not a Treaty Port..... 117
Tariff Rates..... 117
Free List for Importations..... 119
Prohibited Imports of Arms and Ammunition and of Salt.. 120
Likin and Other Transit Taxes upon Exports and Imports.. 120

PAGE
Destination and Consumption Taxes 129
Chinese Stamp Tax on Bills of Lading, Etc 130
Mackay Treaty with Great Britain, 1902 131
Conclusion 133
Maritime Customs Administration 135
Present Customs Administration 139
Tsingtau: Customs Service at 141
Dairen, Customs Administration of 144
Antung and Newchwang 147
Special Arrangement Regarding Trade between Korea and Manchuria 148
Russian Frontier Trade 148
Frontier Trade with Burma and Indo-China 149
China Desires Abolition of Special Frontier Trade Regulations 150
Enforcement of Customs Regulations 152
Native Customs 154
The Chinese Post Office 156

CHAPTER IV

Inland Navigation

Inland Steam Navigation Regulations of 1898 161
Yangtze Regulations of 1898 163
Revision of Rules in 1902 164
Foreign War-Ships on Inland Waters 166
Foreign Surveys of Chinese Ports 167

CHAPTER V

Patent Rights, Trade Marks and Copyrights and Foreign Corporations in China

Treaty Provisions 169
Copyrights 172
Patents 173
Trade-Marks 173

PAGE

Vaseline Case 176
Trade-Marks in the Consular Courts 181
Foreign Corporations in China 181
Foreign Shareholders in Chinese Corporations 185
Taxation of Corporations 187
Proposed American Law 188
Revised Regulations of 1919 Affecting the British Companies Act 189

CHAPTER VI

Landholding by Foreigners in China

Modes of Acquiring Titles 195
Landholding in Manchuria 196
Missionaries in China 197
Missionaries in the Interior 199
Treaty of 1903 200
Status of Chinese Converts to Christianity 203
Secular Work by Missionaries 205

CHAPTER VII

Concessions and Settlements

Foreign Residential Areas, Settlements, and Concessions Defined 208
Land Transfers and Ownership in Concessions and Settlements 210
China's Sovereignty not Surrendered 211
Governing Powers in Concessions 213
Legal Basis of Administrative Ordinances 214
Classes of Concessions and Settlements 217
Legation Quarter at Peking 219
Administration of the Legation Quarter 221
Foreign Garrisons in China 221
Appendix A: Tientsin 223
Appendix B: Shanghai 225

CHAPTER VIII

Leased Areas

PAGE
Kiaochow 228
Sino-German Treaty of 1898 233
Liaotung Peninsula 236
Kuangchouwan 238
Kowloon, Mirs Bay and Deep Bay 239
Weihaiwei 240
Italy 242
Extraterritorial Rights in Leased Territories 242

CHAPTER IX

The Open Door in China and Guarantees of China's Sovereignty and Territorial and Administrative Integrity

The "Open Door" in China 245
Secretary Hay's Circular Letter 246
Responses of Powers to Secretary Hay's Letter 248
Repeated Affirmations of the Open Door Policy 251
Affirmations of the Open Door Policy by Treaties Among the Foreign Powers 253
Open Door and Special Interests 259
Guarantee of China's Sovereignty and Territorial Integrity 261
Significance to China of these Guarantees 262
Administrative Integrity of China 264

CHAPTER X

Spheres of Interest—French, English and Russian

Territorial Losses of China 267
Spheres of Interest and Spheres of Influence Defined 270
Implications of Sphere of Interest 273

PAGE

French Sphere 275
British Sphere 281
Anglo-Russian Agreement of 1899 282
Russian Sphere—Manchuria 286
Cassini Convention 288
The Li Hung Chang-Lobanoff Treaty of Alliance of 1896 Between China and Russia 291
Chinese Eastern Railway 292
Russo-Chinese Bank Chartered 296
Port Arthur-Harbin Railway 297
Railway Guards and Political Jurisdiction 297
Development of Russia's Aggressive Policies in Manchuria .. 299
Anglo-Japanese Alliance of 1902 301
Japan Declares War on Russia 302
Portsmouth Treaty of Peace 303
Russian Political Jurisdiction in North Manchuria since 1905 305
Similar Question Raised by Japanese at Mukden 309

CHAPTER XI

The Japanese in Manchuria

Sino-Japanese Treaty of December 22, 1905 311
Antung-Mukden Railway 312
Secret Protocols to the Treaty of 1905 312
Hsinmintun-Fakumen Railway 313
Russo-Japanese Agreement of 1907 314
Franco-Japanese Understanding of 1907 315
Root-Takahira Understanding of 1908 315
Secretary Knox's Plan to "Neutralize" the Railways in Manchuria 316
Reply of Great Britain 319
Russian Reply 320
Secret Russo-Japanese Agreement of 1899 322
Japan's Reply to Secretary Knox's Proposal 324
Russian and Japanese Pressure upon China 326

PAGE

France and Great Britain Fail to Support Secretary Knox's Proposal 327
Russo-Japanese Treaty of July 4, 1910..... 328
Renewal in 1911 of the Anglo-Japanese Alliance..... 329
Japan's Twenty-One Demands in 1915 upon China..... 330
Group II—Original Form..... 331
Group II—Revised..... 332
Treaties and Notes of 1915..... 336
Comment on the Foregoing Demands, Treaty, and Notes.. 338
Chengchiatun Incident and Resulting Japanese Demands.. 347
Russo-Japanese Treaty of July 3, 1916..... 350
Secret Russo-Japanese Military Alliance of 1916..... 352
Additional Railway, Mining, and Other Rights in Manchuria Acquired by Japan..... 354
Hsinmin-Mukden and Kirin-Changchun Railways..... 355
Mining and Railway Rights Obtained in 1909..... 356
Five Additional Japanese Railways in Manchuria..... 358
Ssupingkai-Chengchiatun Railway Loan Agreement..... 360
Railway Loan Agreements of September 28, 1918..... 362
Kirin-Hueining Railway Loan Agreement..... 362
Gold Mining and Forestry Loan..... 363
South Manchuria Railway Company..... 364
Fushun and Yentai Coal Mines..... 367
Other Activities of the South Manchuria Railway..... 368
Authority of the Government-General of Kwantung Over the Manchurian Railways..... 368

CHAPTER XII

Former German Rights and Interests in Shantung

Railway Rights..... 371
German Mining Rights in Shantung..... 376
German Commercial and Industrial Preferential Rights in Shantung..... 377

CHAPTER XIII

Japan's Position in Shantung

PAGE

Count Okuma's Message to the American People..... 381
Japan's Actions in Shantung..... 382
Japanese Deny Obligation to Return Kiaochow to China... 385
Group I of the Twenty-One Demands of 1915..... 386
China's Reply..... 387
Revised Demands..... 389
Resulting Treaty and Notes..... 390
Effect of China's Declaration of War Against Germany.... 391
Agreements of September 24, 1918..... 393
Japanese Gain Additional Railway Concessions in Shantung 394
War Participation Loan..... 395
China at the Paris Peace Conference..... 396
Secret Engagements of 1917 of the Entente Powers with Japan 397
President Wilson's Position..... 400
The Treaty of Peace: Shantung Provisions..... 401
The Treaty of Peace: German Rights and Interests in China Other Than Those in Shantung..... 402
China Refuses to Sign the Treaty of Peace with Germany.. 405
Japan's Promise to Restore Shantung to China..... 406
President Wilson Corrects Viscount Uchida's Version of the Agreement..... 407

CHAPTER XIV

Other Japanese Interests in China

Japanese Sphere in Fukien..... 411
Twenty-One Demands of 1915..... 411
Yangtze Valley Railroads and the Hangyehping Iron Works 414
Demands of 1915..... 415

CHAPTER XV

Japan's Political Ambitions in and Towards China

PAGE
Group V of the Twenty-One Demands 418
Sino-Japanese Military Agreement of 1918 422

CHAPTER XVI

Japan's "Special Interests" in China—The Lansing-Ishii Agreement

The Lansing-Ishii Agreement 429
China's Declaration with Regard to the Lansing-Ishii Agreement 431
Comment upon the Agreement 433
Secretary Lansing's Testimony before the Committee on Foreign Relations of the United States Senate 437
Conclusions as to the Scope of the Japan's "Special Interests" in China 441
Letters of the Russian Ambassador at Tokyo 445
American Note of June, 1917, to China, and Japan's Attitude with Regard to It 447

CHAPTER XVII

Mongolia and Tibet

Mongolia 451
Russo-Mongolian Treaty of 1912 452
Russo-Chinese Understanding of 1913 454
Tripartite Agreement of 1915 455
Outer Mongolia Cancels Its Autonomy 455
Eastern Inner Mongolia 457
Tibet 459
Chinese Turkestan (Sinkiang) 462

CHAPTER XVIII

Opium

PAGE

Development of the Opium Question 463
America and the Chinese Opium Trade 468
China Prohibits the Smoking of Opium 469
Anglo-Chinese Agreement of 1907 470
International Opium Commission at Shanghai 471
International Opium Conference of 1911 at The Hague 473
Second International Opium Conference at The Hague, 1913 476
Third International Opium Conference at The Hague, 1914. 477
Paris Treaty of 1919 478
Events in China Relating to Opium Since 1917 479
Smuggling and Sale of Morphia in China by the Japanese .. 480
Persian and Turkish Opium 481
Bibliographical Note 481

CHAPTER XIX

China's Foreign Debts and Financial Commitments

Certain Features of Chinese Loans 483
China's Public Debts Classified 487
War and Indemnity Debts 488
Franco-Russian Loan of 1895 488
Anglo-German Loan of 1896 490
Anglo-German Loan of 1898 491
Boxer Indemnities 493
General Governmental and Administrative Reorganization Loans 494
Currency Loan of 1911 494
Crisp Loan of 1912 497
The Six Power Consortium 499
Withdrawal of American Banks from the Consortium 500
The Reorganization Loan of 1913 502
Japanese Advances on Reorganization Loan 506
Belgian Loan of 1912 506

PAGE
Austrian Loans of 1912 507
Lee, Higginson (American) Loan of 1916 508
Chicago Bank Loan 508
Japanese Loans of 1917-1919 509
The Proposed New Consortium 511
Other Loans 519
Anglo-Chinese Loan of 1914 520
Industrial Loan of 1913 520
Banque Industrielle Loan of 1914 520
Kirin Mining and Forest Loan 521
War Participation Loan 522
Telegraph Loan of 1918 523
Plague Prevention Loan 523
Other Loans 523

CHAPTER XX

Railway Loans and Foreign Control

Introductory 524
Shanghai-Woosung Railway 526
Peking-Mukden Line 526
Anglo-Russian Understanding of 1898 530
Peking-Kalgan (Peking-Suiyuan) Railway 531
Shanghai-Nanking Railway 532
Peking-Hankow Railway 535
Chengtingfu-Taiyuanfu Railway 537
Peinlo Railway 538
Chinese Regulations of 1898 for Mines and Railways 538
Canton-Kowloon Railway 539
Tientsin-Pukow Railway 541
Shanghai-Hanchow-Ningpo Railway 547
Canton-Hankow Railway 549
Hukuang Loan and the Chinese Revolution of 1911 557
Tao-Ching or Peking Syndicate Railway 559
Projected Railways Since 1912 560
Shasi-Shingyi (Sha-Shing) Railway 560

PAGE
Siems-Carey Concessions 562
Shantung-Canal Improvement Loan 566
Railways Owned and Operated by Foreign Governments or Interests 566
Summary 568

TABLES

A. Foreign Loans to China Classified According to Their Security.
B. Domestic Loans of China Classified According to Their Security.
C. Schedule of Chinese National Revenues.

INDEX 587

CHAPTER I

Introduction

From the standpoint of international law and diplomacy, the situation in China is complicated in the extreme. Probably nowhere else in the world is there such a mixture of territorial rights with foreign privileges and understandings, of purely political engagements with economic and financial concessions, of foreign interests conflicting with one another and with those of the nominally sovereign State. When a national government is wholly untrammelled with regard to the management of its own domestic affairs and has within its own hands the enforcement of law within its own territorial borders, its international rights and responsibilities are easily determined by a resort to well-established principles of public law. But when, as in the case of China, we have a Power which permits the exercise within its limits of all kinds of extraterritorial rights or privileges; when there exist within its territory spheres of interest, "special interests," war zones, leased territories, treaty ports, concessions, settlements, and legation quarters; when there are in force a multitude of special engagements to foreign Powers with reference to commercial and industrial rights, railways and mines, loans and currency; when two of its chief revenue services—the maritime customs and the salt tax—are under foreign overhead administrative control or direction; when the

proceeds of these and other revenues are definitely pledged to meet fixed charges on foreign indebtedness; when, at various points within its borders, there are stationed considerable bodies of foreign troops under foreign command — when we have these and other phenomena all carrying with them limitations upon the free exercise by the central government of its ordinary administrative powers or its discretionary right to deal as it deems best with the individual nations with which it maintains treaty relations, we then have a condition of affairs which furnishes abundant material not only for theoretical or academic discussions by students of international jurisprudence, but for serious conflict and disputes between the nations concerned. It is clear, then, that before one can hope to have an understanding of the political situation in the Far East, and be qualified to form an intelligent judgment regarding the policies which the several nations should adopt with reference to China, a knowledge must be obtained of at least the general facts regarding the rights which foreigners have in China and the "special interests" or "spheres of interest" or other preferential claims which certain of the Treaty Powers have asserted in that country. This information the writer seeks to supply in this volume.

The writer has not deceived himself nor does he wish to mislead his readers with the idea that he has made a complete statement of the situation. But he hopes that his account will be found helpful, if not fully adequate, and at least of value as an introduction to those who desire to penetrate farther into the complexities of China's diplomacy and of her present international status.

Difficulty in Determining China's International Commitments. In connection with this disclaimer of comprehensiveness the fact should be mentioned that, under any circumstances, it is practically impossible to make a complete statement of the engagements which have been entered into by China with foreign Powers or with their nationals. In the first place, there is the difficulty that presents itself when dealing with the diplomacy and international relations of any country, that none of the Foreign Offices of the world have been willing to publish in full the correspondence between themselves and their diplomatic representatives stationed abroad, and that even the portions of such correspondence as finally are made public often appear only years after the dates they bear. And, even as to the treaties themselves, as is well known, many agreements exist that are known only to the parties signatory to them or to their allies. Perhaps the time will come when all covenants will be open and openly arrived at, but as yet that era has not arrived.

But in the case of China's international relations the peculiar difficulty confronts the student that there are many instances in which China has committed herself, in writings or even conversations of a most informal character, which have not been recorded or made public, and which are only presented when the party claiming under them a beneficial interest deems the time opportune for doing so. Still further, that in many, if not most of these cases, the State of China has been held bound by promises which have been made, or are alleged to have been made, by individual Chinese officials upon their own personal responsibility.

As an illustration of this we may take the following

extract from a newspaper statement by Mr. W. F. Carey, head of the American Siems-Carey Company, in which he describes some of the difficulties with which he had to contend in the attempt to locate the railways for the construction of which his company had obtained concessions from the government of China. After speaking of having overcome obstacles imposed by the "spheres of interest" of the different nations, he found that he had still another bridge to cross. He says:

Shortly after we secured the concession for this line and commenced our active surveys thereon, the British protested to the Chinese Government on the ground that in 1910 a certain Gov. John, of the provinces of Honan and Hupeh, had written to a British Consul stating that, in appreciation of assistance rendered by the latter in securing a loan, the Governor thereby granted to certain British interests the privilege of furnishing any funds that might be required in the future for railway construction throughout the aforesaid provinces. While I have no personal knowledge of the details culminating in this transaction, I am satisfied that the alleged concession constituted the basis of the assistance rendered to the British interest in the premises." "In order to become valid," Mr. Carey continues, "according to Chinese law, this document should have had the sanction of the throne, for at that time China was an empire. After receiving this sanction, the document would go into the files of the Minister of Communications, who has charge of all China's government railways. To my knowledge, it was never clearly shown that this agreement received the sanction of the throne, and as far as I know it was not resting in the files of the Minister of Communications. The Chinese, as a matter of fact, were as much astounded as we were when the British produced the document.[1]

[1] It is perhaps worth mentioning at this point that the Viceroys or Provincial Governors in China paid no great heed to the orders of the Central Government. Previously to this time, the Peking Government had issued a mandate declaring that it would not be responsible for contracts

Another illustration of the same kind is noted by Mr. Putnam Weale in his recent volume, *The Fight for the Republic in China.* He cites the protest made in 1917 by France against the building of a railway in Kwangsi by Americans and financed by American money, the protest being based upon a letter sent by the Chinese Minister of Foreign Affairs to the French Legation in 1914 with reference to a frontier dispute. The letter contained the following paragraph: "In order to demonstrate the especially good friendly relations existing between the two countries the Republican Government assures Your Excellency that in case of a railway construction or a mining enterprise being undertaken in Kwangsi Province in the future, for which foreign capital is required, France would first be consulted for a loan of the necessary capital. On such an occasion, the Governor of Kwangsi will directly negotiate with a French syndicate and report to the Government." [2]

Many Agreements not Ratified by the Chinese Parliament. Since 1911 China has been governed, in theory at least, under a written constitution which provides for a National Parliament and that that body shall have the right "to decide the amount of public loans and agreements involving any obligation on the state treasury." Furthermore, the President is given the authority to conclude treaties only with the approval of the Parliament. As a matter of fact, however, little regard has been paid

or other engagements entered into without its consent by the local authorities, but this had not prevented such agreements being entered into with foreign concerns. The Gov. John referred to by Mr. Carey was probably Viceroy Chang Chih-tung.

[2] *Op. cit.*, p. 306, note.

to these provisions, and a large number of foreign loans have been contracted, for which the Chinese State is held responsible, but which have not been submitted for approval to the Parliament. In some cases, not even the President or the whole cabinet has been consulted, nor have the texts of the loan agreements been made public. These loans, in almost all cases have been made by Japanese banks or other Japanese financial interests, and, for the most part have been negotiated, not through the Japanese Legation at Peking or the Chinese Legation at Tokyo, but by a pseudo unofficial Japanese agent. The important military and naval agreements of March, 1918, which were entered into between China and Japan, were negotiated not by the two Foreign Offices, but by military representatives of the two countries, and their texts were not made public until this was practically forced at the Paris Peace Conference.

Both in ethics and in international law it might be possible to raise a question as to the obligation imposed upon the State of China by promises made by minor officials, or even by cabinet ministers, who have had no constitutional power to make such promises on the part of their government, and who, in many cases, indeed, have acted without any authorization from the President or the Cabinet. Even where moneys have been paid over and expended by these officials the point might conceivably be made that the parties advancing the moneys have had knowledge of the fact that the agreements under which they were advanced were without validity as tested by Chinese law and that therefore they acted at their own risk as to whether the Chinese Government would assume the obligation of making repayment. Especially, in

equity, might such a point be made against the many loans which the Japanese have made to various of the Chinese authorities in view of the fact that it was well known to them that the sums thus advanced would be used by the northern military party in China to continue the civil war against the forces of the southern and southwestern provinces which at that time did not recognize the *de jure* character of the government at Peking, and that thus the welfare of China would be hindered rather than benefited by the loans thus made. However this may be, the fact is that at the present time it is impossible to determine all of China's obligations to foreign powers or to their nationals by an examination of the treaties or other agreements which have been formally approved by the Government at Peking. Even that government itself does not know all of its commitments.

In connection with this matter of China's international commitments it is of interest to remember that the entire action of the Chinese Peace Delegation at Paris, in 1919, and the contemporaneous popular opinion in China, was based upon the contention that the Chinese Nation should not be held bound by the treaties and other agreements with Japan made during the period of 1915 to 1918, all of which lacked parliamentary approval, and some of which were the result of an ultimatum threatening immediate military pressure in case they were not signed. So far as public opinion in China can be definitely determined it would appear that the Chinese are and have been in favor of repaying all moneys actually received through loans irrespective of the manner in which those loans were contracted or the manner in which their proceeds were spent. Chinese public opinion has not favored, however, the

continued recognition of the special rights and incidental obligations created by those loans or other agreements.

Most Favored Nation Clause in Its Application to China. As preliminary to an understanding of the treaty relations between China and the other powers, it is necessary to say a word regarding the operation of the Most Favored Nation principle, for it is this principle that has operated, automatically, to extend to all the Treaty Powers those special rights which, from time to time, China has been led or compelled to grant to particular Powers. As a matter of fact, however, with reference to many of the more important rights which foreign nations and their nationals have in China, China has entered into separate and several treaties with the different Treaty Powers concerned. One important fact which has resulted from this is that China now finds herself so circumstanced that she is unable to escape from these limitations upon her freedom of action except with the unanimous consent of all the Powers to which she has severally bound herself—a consent which experience has shown it is almost impossible for her to obtain.

The sphere within which, according to established principles of international law, the doctrine of the Most Favored Nation is applicable, does not appear to be exactly determined, but, in general, it may be said to include matters of navigation and commerce, that is, "the regulations governing importation, exportation, transit, trans-shipment, warehousing, customs, tariff; the rights of navigation (light anchorage, pilotage, buoys, etc.) quarantine; transit charges on streams and canals; lying-in of vessels in ports and basins; storage of merchandise in bonded warehouses; fisheries; rights of pos-

session and transmission of movable or immovable goods; payment of, or exemption from imposts; extraordinary contributions and forced levies; service in the army or militia; conditions of nationality, the establishment of consulates, etc., etc." [3]

Mr. Herod says of the Favored Nation Clause:

> While its use is not confined to treaties of navigation and commerce, but extends to consular, trade-mark, and other conventions, it is as broad as the basis of the treaty in which it is employed, and is intended to include all subjects which fall properly under the general heading or title of the formal agreement. But it does not need to be said that, by its very nature, it can have no application to agreements of a political nature.

Professor S. K. Hornbeck, who has given us the most recent, as well as the most satisfactory discussion of the Most Favored Nation Clause,[4] states its limitations as follows:

> It is not intended that the clause shall operate so as to affect the internal policy of the State; it applies solely to treatment of foreign States, that is, to the relative treatment of the citizens and the commerce of foreign States. It is not usually considered as comprehending special arrangements and reciprocity between nations, where on account of proximity or special circumstances, reason exists for relations which cannot be shared by the world at large. Special relations between a colony and the mother country are generally understood to be exempt from the operation of the clause.

Two quite different constructions have been given by the different nations to the operation of the clause. According to what has come to be known as the American

[3] Herod, *Favored Nation Treatment*, p. 2.

[4] In three articles in the *American Journal of International Law*, Vol. III, pp. 395, 691, and 797.

view, other nations are not held entitled to the privileges granted by the contracting States unless those nations furnish the same considerations or make the same reciprocal concessions which the contracting States had furnished or made to each other.

This doctrine is set out and argued by the United States in correspondence extending over fourteen years relating to a claim made by France under the favored nation clause contained in a treaty entered into in 1803 between France and the United States for the cession to the latter of the Louisiana Territory.

Opposed to this doctrine is the one especially favored by nations pursuing a policy of free trade which asserts that any commercial or non-political privilege granted by one State to another State may be claimed by other States who have been promised most favored nation treatment by the State granting the privilege, and this without regard to whether the State thus claiming the privilege makes or is in a position to return therefor a *quid pro quo* corresponding to that upon which the granting of the privilege in question was made.[5]

Dispute as to which of the two foregoing doctrines of most favored nation treatment shall be applied can be, and now often is, prevented by specifying, where the most favored treatment is promised, whether it is to be construed to be conditional or gratuitous.

The most favored nation clause made its appearance in China at practically the beginning of its treaty rela-

[5] For an account of most favored nation clauses in American treaties, see Moore's *Digest of International Law*, Vol. v, Sec. 765. See also the article by A. H. Washburn, "The American Interpretation of the Most Favored Nation Doctrine," in the *Virginia Law Review*, January, 1914 (Vol. 1, p. 257).

tions with the Western Powers. In the so-called Supplementary, or Hoomun-Chai, Treaty of 1843 with Great Britain, it was provided (Article VIII):

> The Emperor of China having been graciously pleased to grant to all foreign countries whose subjects, or citizens, have hitherto traded at Canton the privilege of resorting for purposes of trade to the other four ports of Foochow, Amoy, Ningpo, and Shanghai, on the same terms as the English, it is further agreed, that should the Emperor hereafter, from any cause whatever, be pleased to grant additional privileges or immunities to any of the subjects or citizens of such foreign countries, the same privileges and immunities will be extended to and enjoyed by British subjects; but it is to be understood that demands or requests are not, on this plea, to be unnecessarily brought forward.[6]

Clauses similar, and even broader than this,[7] were soon after included in treaties between China and the other Powers. The result, of course, is that in order to determine what treaty rights a particular nation has in China it is necessary to ascertain what privileges or immunities of a commercial or economic nature have been granted by China to any of the other Treaty Powers.[8]

Chinese Circular of 1878. In the Circular of 1878 sent by the Chinese Foreign Office to its ministers abroad, the following complaint was made:

[6] *Customs Treaties*, I, p. 393.

[7] For example, in the Treaties of Tientsin of 1858, it was provided that the nations concerned should enjoy the privileges or immunities which "may have been or may be hereafter granted."

[8] With reference to the operation of the most favored nation clause in China, see especially Chapter IV of Tyau's *The Legal Obligations Arising Out of Treaty Relations between China and Other States;* and an article by Kuo Yün-Kuan entitled "The Legitimate Bounds of Most Favored Nation Treatment in China," in the *Chinese Social and Political Science Review*, Vol. I, p. 40 (April, 1916).

The Most Favored Nation Clause is found in all the treaties and it is well that it should be so; for it is difficult for China to distinguish between foreigners, or say which belong to which nationality; and so much is this so, that even non-treaty power foreigners are trusted like the others. The object of the foreign negotiator in introducing this clause was to prevent his own nationals from being placed at a disadvantage as compared with others, and to secure that all should be equally favored. Now, this is precisely what China desires. But foreign governments, although their objects in negotiating for the most-favored-nation clause were similar to those of China, are not always fair in their interpretation of it. For example, if China, for a consideration, grants a certain country a new privilege on such and such conditions, this would be of the nature of a special concession for a special consideration. Should other countries come forward and, in virtue of the most favored nation clause, claim to participate in the new privilege, although China need not necessarily exact a similar consideration in return, yet it would be only just to expect that in enjoying the privilege they would consent to observe the conditions accepted by the power to which it was originally granted. But, far from this being the case, there are some who, while demanding the privilege, refuse to be bound by the conditions attaching to it. This is the unfair interpretation to which China objects. In a word, as regards this most favored nation clause, we hold that if one country desires to participate in the privileges conceded to another country, it must consent to be bound by the conditions attached to them, and accepted by another.[9]

---

[9] *U. S. For. Rels.*, 1880, p. 177.

CHAPTER II

Extraterritoriality in China

An understanding of the extraterritorial rights enjoyed by foreigners resident, trading, or traveling in China is a prerequisite to an understanding of domestic conditions in that country as well as of its international relations. It is a subject, therefore, which we shall consider with some degree of particularity. In pursuing this inquiry we are fortunate in having the aid of such works as those of Koo, Tyau, Morse, Piggott, and Hinckley.[1]

Trade Conditions Prior to 1842. Commercial and other relations between China and the nationals of Western Powers date from comparatively early times, but it was not until the Treaty of Nanking in 1842 that a beginning was made of formal treaty relations.[2] There had been,

[1] V. K. Wellington Koo, *The Status of Aliens in China*, Columbia University Press, 1912. M. T. Z. Tyau, *The Legal Obligations Arising Out of Treaty Relations Between China and Other States*, Shanghai, Commercial Press, 1917. H. B. Morse, *The Trade and Administration of China*, Shanghai, Kelly & Walsh, 1913. F. E. Hinckley, *American Consular Jurisdiction in the Orient*, Washington, D. C., Lowdermilk, 1906. Sir Francis Piggott, *Extraterritoriality*, new ed., 1907.

[2] This statement perhaps needs qualification as regards certain early trade agreements in the seventeenth and eighteenth centuries between Russia and China. These, however, made no provision for placing international relations with China upon a formal or systematic basis. It was not until the Treaties of Tientsin in 1858 that provision was made for the stationing of regular diplomatic representatives at Peking. The Chinese did not create a Ministry of Foreign Affairs—the Tsungli Yamen—until 1860. Before this time the Chinese Government had dealt with the representatives of foreign Powers as agents of States inferior to, or dependent upon, itself.

however, prior to this date a considerable amount of maritime trading on the part of foreigners with the Chinese, especially by the British at and in the vicinity of Canton. This trade, however, had received no formal recognition, nor had the traders been given any legal standing in China by the Imperial Government at Peking. Attempts upon the part of the English Government to correct this unsatisfactory condition of affairs had met with contemptuous refusal upon the part of the imperial authorities.

During this non-treaty period there was frequent friction between the foreigners and the local Chinese authorities due, upon the one hand, to the refusal of the Chinese to recognize those rights of the foreigners which Western international law recognized (for example, with regard to the status of ships-of-war in foreign ports); and, upon the other hand, to the refusal of the foreigners to recognize the due authority of the local law and courts. With regard to this second point we may quote Dr. Koo's analysis of the situation. He says:

> A want of regard for Chinese laws characterized the foreigners who went to China in the seventeenth and eighteenth centuries. They were either adventurers or desperate characters, and, with the exception of a few missionaries, they were all animated by the sole desire to seek fortunes in a new land. It mattered little what the territorial laws required and what they prohibited; they came on a mission to replenish their purses and were prepared to leave as soon as their object was accomplished; in their opinion, it would have been disloyal to themselves to allow their conduct to be shackled by laws of which they knew nothing, and about which they did not care to know anything. A small number of them, endowed with an inquiring mind, indeed manifested an interest in Chinese laws and acquired a knowledge of them; but then, they observed, China was such a different country from their own, particularly in

religion, that they considered it impossible to obey her laws without at the same time humiliating themselves and disgracing their own country. To govern themselves by laws with which they were familiar was equally impossible; there was no common organization in existence over them, nor could they recognize any one of their own class assuming to restrain their conduct in China and regulate their intercourse with the Chinese people. Under these circumstances it is not surprising that they considered themselves as exempt from all laws.[3]

As a presentation of the situation from another point of view, we may quote from the elaborate communication sent September 29, 1844, by Caleb Cushing to John C. Calhoun, Secretary of State, in support of the doctrine that American citizens in China should not be subjected to the laws and courts of the territorial sovereign.[4]

Nothing, it would seem, correspondent to our law of nations, is recognized or understood in China. I had some evidence of this in the progress of my own intercourse with the Chinese authorities; and there is abundance of public facts to the same effect. When, for example, Commodore Anson visited China, in 1841, the Chinese claimed to apply the municipal law to the *Centurion*, as they have repeatedly, since then, sought to do in case of other ships-of-war, those of the United States as well as of Europe. In the progress of the late events, we have seen the Chinese Government subject a diplomatic agent of Great Britain to personal restraint, and undertake to restrain the consuls of *all* foreign Powers in order to enforce the submission of the subjects of *one* Power. Subsequently, during the prosecution of hostilities, the Chinese paid no regard to flags of truce, and treated prisoners of war of both sexes as common felons. These things evince utter ignorance, or at least disregard of the law of nations, as understood in Europe. Similar inferences are deducible from the fact that

[3] *Op. cit.*, p. 64.

[4] *Sen. Ex. Doc.* 58, 28th Cong., 2nd sess. In 1844, while in China, Mr. Cushing negotiated the first Sino-American treaty.

formerly all ministers of European States in China (except perhaps those of Russia) were compelled to admit, either directly or indirectly, the sovereignty of China; for the several Dutch and Portuguese ministers who visited Peking did homage to the Ta Howang Tei, and even Lord Macartney and Lord Amherst, though the former peremptorily refused to do homage and the latter was reluctantly persuaded by Sir George Staunton to refuse it, yet went to Peking, both of them, knowingly and with tacit acquiescence designated as tribute bearers.

"With such extravagant political pretences," Mr. Cushing continues, "it is to be supposed, of course, that the Chinese Government would assert a complete and exclusive municipal jurisdiction over all the persons within the territory and waters of the empire."

Yet Mr. Cushing admitted, as perforce he was obliged to do, that the Chinese were at that time a highly civilized people. He said: "It is impossible to deny to China a high degree of civilization, though that civilization is, in many respects, different from ours; yet the magnitude of the Empire, the stability of its political institutions, the great advancement which the Chinese have made in the arts of life, the sedulous cultivation of letters, as well as the other useful and ornamental objects of intellectual pursuit, are such as to give to China as complete a title to the appellation of civilized as many if not most of the States of Christendom can claim."

Basis of Extraterritoriality in China. Despite the admission which has been quoted, Mr. Cushing went on to contend that the American Government should demand extraterritorial rights in China for American citizens, not as a matter of concession upon the part of China, but as a principle of established international law; — that is,

that such a nation as China then was, was not entitled to assert the general principle of territorial sovereignty in order to retain jurisdiction over persons within her borders. In substantiation of this doctrine Mr. Cushing relied upon what had been the practice among European nations prior to the development of the comparatively modern idea of exclusive territorial sovereignty, and what had continued to be the practice with reference to status of nationals of the Western Powers residing in the Levant.

It is quite clear, however, that Mr. Cushing was in error in founding the claim to extraterritorial rights in China upon the same basis as that supporting them in the Mohammedan countries of the Near East, or in finding for them a homologue in the conceptions of personal sovereignty which prevailed in Europe prior to the fifteenth and sixteenth centuries.

As regards this latter point, Mr. Cushing himself states that China insisted upon the doctrine of territorial jurisdiction, though she not always was successful in securing its application.[5] As contrasted with this, the Mohammedan States were, as a rule, more than willing that the foreigners — and unbelievers — should remain under their own national laws, and, out of this willingness, developed a custom, extending over many years, and recognized by many "capitulations" which sup-

[5] Morse calls attention to the fact that the early treaties between China and Russia in the seventeenth and eighteenth centuries, contained mutual provisions for the handing over to their own officials for punishment nationals committing offenses in the other's country. But no arrangement was made for the appointment by Russia of consuls or other officials who might exercise jurisdiction in China. *Trade and Administration in China*, Chap. VII.

ported the system of extraterritoriality which existed in Turkey and other Mohammedan countries.

In fine, then, upon this rather important point we would hold that Dr. Koo is well justified in the extended criticism which he makes of Mr. Cushing's argument and agree with him that the whole body of extraterritorial rights which have existed in China for three-quarters of a century owe their legal existence to concessions made by China in her treaties with Western Powers; in short, that these treaties created the rights and did not simply recognize rights which had another origin.[6]

Origin of Extraterritoriality. This situation in which the foreigners claimed exemption from, and the Chinese

[6] "The assertion and exercise by Great Britain of jurisdiction over her subjects in China," says Dr. Koo (p. 63), "were commenced nearly a decade before China's consent to such questionable procedure was obtained. . . . What Great Britain succeeded, therefore, in wringing from China at the end of the expensive and ignoble war in 1842, in respect of the question of jurisdiction over British subjects in China, was merely an official recognition of what had already been brought into being and engrafted on her, in practice, without her consent or countenance."

Mr. Hinckley in his *American Consular Jurisdiction in the Orient*, takes the same position as that of Dr. Koo. He says (p. 15):

"Between the treaties with Turkey and those with China there is this fundamental difference, that the treaties with China contain no reference to privileges resting upon customs and usages. With the exception of the restricted privileges enjoyed by the Russian caravans in extreme northwestern China many years before the western European treaties with China were made, these treaties marked the very beginning of extraterritorial jurisdiction in that country. The earlier practice had, in fact, been just the opposite of that stipulated in the treaties. But the customary rights of foreigners in Turkey were so considerable and of so long standing that no attempt was made to reduce all of them to explicit written statement."

And on page 16, Hinckley adds: "Another fundamental distinction is that in the Mohammedan states foreigners of whatever Christian nation, whether subjects of the treaty powers or not, are by immemorial custom permitted to enjoy extraterritorial privileges through the system of consular protection."

insisted upon subjection to, the local law and local authorities inevitably led to constant disputes and became still more unendurable when the matter of the control of the importation of Indian opium into China became involved. The so-called Opium War between China and Great Britain, which was the result of this friction, was terminated by the Treaty of Nanking in 1842, which marks not only the legalized beginning of the system of extraterritorial rights in China, but also of formal treaty relations between China and the Western Powers. Elsewhere we shall have occasion to speak of the provisions of this Treaty of Nanking with reference to foreign trade with China. Here we shall be concerned only with its bearing upon the matter of extraterritoriality.

Extraterritorial rights were not expressly granted in the treaty, but that instrument made provision for the functioning of British Consular officials in China, and it is clear that it was the understanding of those who negotiated the treaty that extraterritorial rights should be enjoyed by British traders resident in China. This understanding was given expression to in the so-called "General Resolutions" issued in pursuance of the Treaty. Article XIII of these Resolutions read as follows:

> Whenever a British subject has reason to complain of a Chinese he must first proceed to the Consulate and state his grievance. The consul will thereupon inquire into the merits of the case, and do his utmost to arrange it amicably. In like manner, if a Chinese have reason to complain of a British subject, he shall no less listen to his complaint, and endeavor to settle it in a friendly manner. . . . If, unfortunately, any disputes take place of such a nature that the Consul cannot arrange them amicably, then he

shall request the assistance of a Chinese officer, that they may together examine into the merits of the case, and decide it equitably. Regarding the punishment of English criminals, the English Government will enact the laws necessary to attain that end, and the Consul will be empowered to put them in force; and regarding the punishment of Chinese criminals, these will be tried and punished by their own laws, in the way provided for by the correspondence which took place at Nanking, after the concluding of the peace.[7]

It will be noted that, as correlative to the granting of this special status to resident merchants, the Chinese Government, in the Supplementary Treaty of 1843, took care to have it expressly stated that the merchants should not have the right to repair to, or trade at, any but the five specified ports, and that even as to those ports, the foreign merchants were not to go into the surrounding country beyond certain short distances to be named by the local authorities in concert with the British Consul.[8]

American Treaty of 1844. The exercise of extraterritorial rights thus placed upon a definite basis, received still more explicit statement in the treaty of 1844 between the United States and China. Article XXI of that agreement provided as follows:

Subjects of China who may be guilty of any criminal act towards citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China, and citizens of the United States who may commit any crime in China shall be subject to be tried and punished only by the Consul or other public functionary of the United States thereto authorized according to

[7] *Customs Treaties*, I, p. 388.

[8] For an account of British Statutes and Orders in Council, making provision for the exercise in China of British Consular and other jurisdiction, see Koo, *op. cit.*, pp. 138 ff.

the laws of the United States; and in order to secure the prevention of all controversy and disaffection, justice shall be equitably and impartially administered on both sides.[9]

This article, it will be observed, related only to criminal cases. In Article XXIV, however, there was the provision that "if controversies arise between citizens of the United States and subjects of China, which cannot be settled amicably otherwise, the same shall be examined and decided conformably to justice and equity by the public officers of the two nations acting in conjunction." And in Article XXV it was declared:

All questions in regard to rights, whether of property or person, arising between citizens of the United States in China, shall be subject to the jurisdiction of, and regulated by the authorities of their own Government. And all controversies occurring in China between citizens of the United States and subjects of any other Government shall be regulated by the treaties existing between the United States and such Governments, respectively, without interference on the part of China.[10]

And furthermore, by Article XVI, there was the following specific provision with regard to the procedure for the collection of debts:

The Chinese Government will not hold itself responsible for any debts which may happen to be due from subjects of China to citizens of the United States, or for frauds committed by them; but citizens of the United States may seek redress in law; and on suitable representation being made to the Chinese local authorities through the Consul, they will cause due examination in the premises, and take all proper steps to compel satisfaction. But in case the debtor be dead, or without property, or have absconded, the creditor cannot be indemnified according to the old system of

[9] *Customs Treaties*, I, p. 685.
[10] *Customs Treaties*, I, p. 687.

the co-hong, so called. And if citizens of the United States be indebted to subjects of China, the latter may seek redress in the same way through the Consul, but without any responsibility for the debt on the part of the United States.[11]

Tientsin Treaty of 1858. In the Chinese-American treaty of June 18, 1858, the so-called Tientsin Treaty, we find extraterritoriality provided for in the following language:

Article XI. . . . Subjects of China guilty of any criminal act towards citizens of the United States shall be punished by the Chinese authorities according to the laws of China; and citizens of the United States, either on shore or in any merchant vessel, who may insult, trouble or wound the persons or injure the property of Chinese, or commit any other improper act in China, shall be punished only by the Consul or other public functionary thereto authorized, according to the laws of the United States. Arrests in order to trial may be made by either the Chinese or the United States authorities.[12]

Finally, by Article IV of the Supplemental Treaty of November 17, 1880, between China and the United States, the extraterritorial principle was still more specifically stated in the following words:[13]

When controversies arise in the Chinese Empire between citizens of the United States and subjects of His Imperial Majesty which need to be examined and decided by the public officers of the two nations, it is agreed between the Governments of the United States and China that such cases shall be tried by the proper official of the nationality of the defendant. The properly authorized official of the plaintiff's nationality shall be freely permitted to attend the trial, and shall be treated with the courtesy due to his position.

[11] *Ibid.*, I, p. 683.

[12] *Customs Treaties*, I, p. 717.

[13] See also the statement of the principle in the Chefoo Convention of 1876 between Great Britain and China.

He shall be granted all proper facilities for watching the proceedings in the interests of justice. If he so desires, he shall have the right to present, to examine, and to cross-examine witnesses. If he is dissatisfied with the proceedings, he shall be permitted to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case.[14]

Extraterritorial Jurisdiction Summarized. Applying the principles stated in the extraterritorial provisions of the treaties which have been quoted, it is found that the situation is as follows:

1. As regards the controversies in which no foreigners are involved, the jurisdiction is wholly in the hands of the Chinese authorities, and the suits are adjudicated according to Chinese law and procedure.

2. As regards controversies between two or more nationals of the same Treaty Power, the jurisdiction is exclusively in the consular or other courts which that Power is permitted by China to establish and operate in China, and the law applied is that of the Power concerned. Chinese police officials may make arrests, in criminal cases, but the offenders must be brought as speedily as possible and without undue hardship before, and surrendered into the custody of, the authorities of the State of which the offenders are nationals.[15]

3. Over controversies between nationals of different Treaty Powers, the Chinese authorities exercise no juris-

[14] *Customs Treaties*, I, p. 738.

[15] Koo (*op. cit.*, p. 179) says of civil controversies between aliens in China: "The general practice is that they are arranged officially by the consuls of both parties without resort to litigation; but where amicable settlement is impossible, the principle of jurisdiction followed is the same as in those between China and a foreign Power, namely, the plaintiff follows the defendant into the court of the latter's nation."

diction: they are determined by the authorities and the laws of the States concerned according to agreements thereunto appertaining entered into between these States.

4. As regards actions brought by nationals of non-treaty Powers against nationals of the Treaty Powers the jurisdiction is in the authorities of the Treaty Powers. As regards suits, civil or criminal, in which the non-Treaty Power nationals are defendants, jurisdiction is in the Chinese courts. As regards controversies to which all the parties are non-treaty power nationals, or in which they appear as plaintiffs or complainants against Chinese defendants, the jurisdiction is in the Chinese tribunals and the law applied is that of China. The Treaty Powers sometimes exercise their "good offices" in behalf of non-treaty power nationals in such suits, but there does not exist in China the system, found in Turkey and other countries of the Levant, according to which a Treaty Power is permitted to take under its protection and authority, as protégés, the nationals of other powers.[16]

[16] It should be noted that some of the Powers have attempted to introduce into China the principle of protégés. Especially has this been true of France and Russia. But as yet China has not conceded the principle. If the system of protégés were recognized the question would arise whether, in such cases, the plaintiffs and nationals of other Treaty Powers would be entitled to have their respective consular officials sit as assessors, just as they would if the cases were tried in the Chinese courts.

In 1873 the United States Government refused to permit its consul at Canton to take jurisdiction in the case of a criminal charge against a citizen of a Non-Treaty Power (New Grenada) even though he had consented thereto, and the Chinese authorities had waived their jurisdiction. Secretary of State Fish wrote as follows: "Mr. Jewell had no authority whatever to entertain jurisdiction of the case. . . . Under the laws of the United States, jurisdiction in a criminal case cannot be conferred by consent even in one of the established courts of record of the country.

Controversies between Chinese and Treaty Power Nationals. It is with reference to controversies between Chinese nationals of the Treaty Powers that the principle of extraterritoriality finds direct application.

Here the general doctrine is that the jurisdiction, both civil and criminal, is in the tribunals of the defendant and the law applied is that of his own country.[17] This doctrine, it is to be observed, applies not only in the Treaty Ports where foreigners are permitted to reside, lease lands, erect houses and carry on trade and manufacturing, but also throughout China. This means that no matter where the offense is committed, if the matter be a criminal one, or where the foreign defendant happens to be, the matter must be taken before his Consul or other authorized official of his Government, although the nearest one may be hundreds of miles away. The difficulties thus involved in supplying witnesses and other information are evident. In civil suits there is also the

Much less is this the case with the consular court, which is a tribunal of limited and inferior jurisdiction, possessing only such powers as are expressly conferred by acts of Congress in conformity with the provisions of existing treaties. The waiver of their authority in the matter by the Chinese officials invested the consul with no new or additional powers.

"In Oriental countries where, in order to preserve to citizens of the United States, as far as possible, the personal rights recognized as belonging to them in their own country, it is found necessary to have these rights and the privileges that pertain to them precisely defined by treaty stipulation, it becomes all the more necessary that officers of the United States resident in those countries should, in the exercise of their functions, confine themselves strictly within the powers guaranteed by treaty stipulation and regulated by settled principles of public law. Such a course on their part will not only tend to prevent unpleasant complications, but do much to secure from the people of those countries respect for the rights of American citizens resident therein." *U. S. For. Rels.*, 1873, Vol. I, p. 139.

[17] The special problems presented by the so-called mixed courts in which cases brought by foreigners against Chinese defendants are heard, will be considered later on in this chapter.

serious disadvantage that it is not possible to consider counter-claims in the same suit, for, as to these, the foreign defendant becomes substantially the plaintiff and, therefore, the matter is one over which the Chinese courts have exclusive jurisdiction.

By accepting employment under the Chinese Government a foreigner does not waive his extraterritorial rights. However, it would appear that, in the Maritime Customs at least, a foreign employee charged with a serious criminal offense is expected to resign and report to his consul, but, if acquitted before him, is allowed to resume his office with full pay for the period of his resignation.[18]

It will be observed that, when a Chinese is plaintiff, or the matter concerns a violation of the criminal law by a national of a Treaty Power, the Chinese Government has the right to have a representative present at the trial to see that due justice is done. We have the authority of Mr. Morse, however, that this right is not ordinarily used. He says: "This is the theory. In practice, the Chinese have seldom sent representatives to sit on the bench in the foreign courts, since it has been generally recognized that the judgments rendered there are based on the law and the evidence."[19]

Koreans in Chientao, Special Status of. By an agreement of 1909 between China and Japan a rather special status is given to Koreans taking up residence in Chinese territory north of the Tumen River. This agreement

[18] See letter of Acting Secretary of State Hill to Minister Angell at Peking, August 16, 1881, *U. S. For. Rels.*, 1881-82, p. 286.

[19] *Trade and Administration of China*, p. 200.

provides that Koreans established in this area, engaged in cultivating the land, shall be permitted to remain there and be subject to the jurisdiction of the local Chinese officials. These " shall treat the Koreans and Chinese with equality as regards payment of taxes and in the enforcement of the laws. Chinese officials shall administer Chinese law in all civil and criminal cases where Koreans are concerned. A Japanese Consular official may at all times attend the court proceedings. In cases where capital punishment may be adjudged, the Japanese Consul must be notified. If the Japanese Consul can point out any irregularities in the proceedings, he may request that another official be appointed to hold a rehearing of the case, so that justice may be obtained." It is also expressly provided that Koreans shall have the same protection for their property as is accorded the Chinese; that moorings for their boats shall be provided; and that they may pass at will from place to place, but shall not be permitted to cross the frontier with arms except with a special pass. They are also, except in times of special stress, to be allowed to send out of the country their grain, straw, and fuel.[20]

Extraterritorial Courts. The extraterritorial jurisdiction possessed by the Treaty Powers in China is exercised, in the main, by consular officials, by diplomatic officials at Peking (upon appeal from the consular courts) and, in the case of Great Britain, by the British Supreme Court for China, and, in the case of the United States, by the United States Court for China. Of the

[20] *Customs Treaties*, II, p. 768; MacMurray, No. 1909/10.

jurisdiction and operation of these tribunals the following is a brief description.

Consular Courts. All of the Treaty Powers authorize their consular officials to exercise jurisdiction in civil or criminal cases to which their nationals are parties defendant. In this place we shall deal in detail only with the powers and procedure of the American courts, but, *mutatis mutandis,* the account will fit the consular tribunals of the other Treaty Powers.

American Courts in China. By the treaty of July 3, 1844, negotiated and drafted by Caleb Cushing and signed at Wanghia, to which reference has earlier been made, the United States, following the example set by Great Britain in 1842, demanded and obtained an extra-territorial status for American citizens in China. The rights thus obtained were broadened in the treaty of 1858 and later treaties, and, of course, under the most favored nation clause, American citizens in China became entitled to rights granted by China to the other Powers.

In order to give the necessary statutory authority to American consuls to exercise the judicial functions permitted by the treaty of 1844, Congress passed the act of August 11, 1848.[21] It will not be necessary, however, to consider the provisions of this act, since they were soon replaced by those of the act of June 22, 1860.[22] This act was again modified by the acts of July 28, 1866,[23] and of July 1, 1870;[24] and the substance of these laws is now

[21] IX *Statutes at Large,* p. 276.
[22] XII *Statutes at Large,* p. 72.
[23] XIV *Statutes at Large,* p. 322.
[24] XVI *Statutes at Large,* p. 184.

to be found in Sections 4083-4130 of the Revised Statutes. Since the enactment of the Revised Statutes the only important acts of Congress relating to the exercise of extraterritorial rights in China have been those of June, 1906, establishing the United States Court for China;[25] a provision, in the Diplomatic and Consular Appropriation Act of March 2, 1909, according to which the judicial power vested in the Consul-General at Shanghai is vested in the Vice-Consul General; and another provision in the Diplomatic and Consular Appropriation Act of March 4, 1915, vesting the same power in the Vice-Consul at Shanghai.

In the paragraphs which follow we shall speak first of the judicial powers exercised generally by American consuls in China and then consider the reasons leading to the establishment, in 1906, of the United States Court for China.

American Consular Courts: Statutory Provisions. Under the laws of 1860, 1866, and 1870 and embodied in the Revised Statutes, the American consuls and the American Minister at Peking were authorized to exercise the jurisdiction permitted by the treaties with China.

They were authorized to arraign and try all citizens of the United States charged with offenses against the law and to issue all the necessary writs and processes.

In civil causes they were invested "with all the judicial authority necessary to execute the provisions of such treaties, respectively, in regard to civil rights whether of property or person."

[25] XXXIV *Statutes at Large*, p. 814.

As regards the law to be applied, Section 4086 of the Revised Statutes provides:

> Jurisdiction in both criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law, nor the law of equity or admiralty, nor the Statutes of the United States, furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies.[26]

By Section 4106 of the Revised Statutes it is provided that the consul, whenever he is of opinion that, by reason of the legal questions which may arise, assistance will be useful to him, or whenever he is of opinion that severe punishments will be required, shall summon to sit with him on the trial, one or more American citizens, not exceeding four, and, in capital cases, not less than four, who shall be taken by lot from a list previously prepared by him and approved by the American Minister. The consul, in such cases, gives the judgment, but the associates are required to record their several judgments and opinions. If the consul and his associates concur, the decision rendered is final, except as to cases in which, by other sections of the law, a right of appeal is given. If

[26] This paragraph was taken from the law of 1860.

any of the associates differ in opinion from the consul the case, without further proceedings, together with the evidence and opinions, is referred to the Minister for his adjudication.

Further sections from the Revised Statutes which cannot be satisfactorily summarized are given *in extenso* in an Appendix to this chapter.

An inspection of these provisions makes it clear that the administration of justice through consular officials, in a country like China, is not without its difficulties, some of which will be more particularly referred to in a later section in which will be discussed the desirability, from the standpoint of the interests of foreign Powers, as well as from that of the welfare of China, of getting rid of the whole system of extraterritoriality.

The United States Court for China. In 1906, without touching the system of extraterritoriality itself, Congress endeavored to correct, in part at least, certain of the evils which were not ineradicably inherent in the system. These corrigible evils were those connected with the diversities of practice and doctrines of the different consular courts; with the fact that these courts are held by officials untrained in the law; and with the matter of appeals to the Minister at Peking and to the Federal Circuit Court for the District of California. These improvements in the system were embodied in the Act of June 30, 1906, entitled "An Act Creating a United States Court and Prescribing the Jurisdiction thereof." The more important portions of this statute will be quoted or summarized.[27]

[27] XXXIV *Statutes at Large*, Pt. 1, p. 814.

Be it enacted, etc. . . . That a court is hereby established, to be called the United States Court for China, which shall have exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by United States consuls and ministers by law and by virtue of treaties between the United States and China, except so far as the said jurisdiction is qualified by Section 2 of this Act. The said court will hold sessions at Shanghai, China, and shall also hold sessions at the cities of Canton, Tientsin, and Hankow at stated periods, the dates of such sessions at each city to be announced in such manner as the court shall direct, and a session of the court shall be held in each of these cities at least once annually. It shall be within the power of the judge, upon due notice to the parties in litigation, to open and hold court for the hearing of a special cause at any place permitted by the treaties, and where there is a United States consulate, when, in his judgment, it shall be required for the convenience of witnesses, or by some public interest. The place of sitting of the court shall be in the United States Consulate at each of the cities, respectively.

Section 2 of the Act, which qualifies the exclusive jurisdiction vested by the first section in the United States Court, provides that the consuls in China shall have the same jurisdiction they had previously possessed in civil cases not involving more than $500 of money or property, and in criminal cases where the punishment for the offense charged cannot exceed $100 fine or sixty days' imprisonment, or both; and that they shall have the power to arrest, examine and discharge accused persons or commit them to the United States Court.

From the final judgments of the consular courts either party may appeal to the United States Court.

To the United States Court is also given "supervisory control over the discharge by consuls and vice-consuls of the duties prescribed by the laws of the United States

relating to the estates of decedents in China." In order that this supervisory control may be effectively exercised, the Act of 1906 goes on to provide that inventories of estates shall be filed by the consuls and vice-consuls with the Clerk of the Court, together with schedules of debts of the decedents; and that no payments of claims against these estates or sales of property belonging thereto shall be made without the approval of the judge of the Court. Other provisions of the act relate to the rendering of reports, the giving of special bond, etc.

Section 3 of the act relates to appeals from the United States Court and reads, in part, as follows:

> That appeals shall lie from all final judgments or decrees of the said court to the United States Circuit Court of Appeals of the ninth judicial circuit, and thence appeals and writs of error may be taken from the judgments or decrees of the said Circuit Court of Appeals to the Supreme Court of the United States in the same class of cases as those in which appeals and writs of error are permitted to judgments of said Court of Appeals in cases coming from district and circuit courts of the United States.

By Section 5 of the act it is provided that the procedure of the court shall be in conformity with existing rules governing the consular courts in China, but that "the judge of the said United States Court for China shall have authority from time to time to modify and supplement said rules of procedure."

The act, in its remaining sections, makes provision for a district attorney, a marshal, and a clerk of the court, and for their salaries. The tenure of the judge is fixed at ten years. The judge and district attorney must be lawyers of good standing and experience and are to be appointed by the President by and with the consent of the Senate.

With regard generally to the jurisdiction of the court, it may be observed that, territorially, it extends throughout China; and that, as regards parties, while anyone may be a plaintiff, the defendant must be of American nationality.[28]

In the opinion rendered by the Supreme Court of the United States in the case *In re Ross* (also sometimes cited as *Ross vs. McIntyre*)[29] the constitutional powers of Congress, legislating for the enforcement of treaty rights, to vest judicial powers in consuls or other officials stationed in foreign countries, is carefully considered. In that case one of the questions was as to whether the accused, who was charged with murder committed on board of an American ship in the harbor of Yokohama, Japan, had the right to claim the guarantees of the United States Constitution with regard to indictment by a grand jury and trial by a petit jury. The denial that he had the right to claim these privileges the Supreme Court based upon the assertion that, " By the Constitution a government is ordained and established ' for the United States of America,' and not for countries outside their limits. The guaranties it affords against accusation of capital or infamous crimes, except by indictment or presentment by a grand jury, and for an impartial trial by a jury, when thus accused, apply only to citizens and others within the United States, or who are brought there for trial for alleged offenses committed elsewhere, and not to residents or temporary sojourners abroad.

[28] When the action is *in rem*, that is, concerning status or property alone, this is not necessary. See *Richards vs. Richards*, U. S. Court for China, No. 424.

[29] 140 U. S. 453 (1881).

The Constitution can have no operation in another country. When, therefore, the representatives or officers of our Government are permitted to exercise authority of any kind in another country, it must be on such conditions as the two countries may agree, the laws of neither one being obligatory upon the other."

His Britannic Majesty's Supreme Court for China. Great Britain is the one other country besides the United States which has seen fit to establish in China a tribunal which will supply a more dignified and technically correct mode of administering justice than can possibly be supplied by the consular courts.

This court was established by an Order in Council of October 24, 1904.[30]

This Order in Council was not simply one for the establishment of the Supreme Court, but to revise earlier orders and to provide, in effect, a code of law, substantive as well as procedural, for the administration of British judicial authority in China and Korea.[31] It will, therefore, not be practicable to do more than summarize a few of the more important features of this detailed measure.

The order provides for a Supreme Court sitting ordinarily at Shanghai, and Consular, or, as they are termed, "Provincial Courts," sitting at the cities where British consulates are maintained. All these courts are courts of record.

The Supreme Court, termed "His Britannic Majesty's Supreme Court for China (and Korea)" is composed of

[30] The text of this order may be found in *British and Foreign State Papers*, Vol. 97, pp. 150-209, and also in Hertslet's *China Treaties*, II, 834.

[31] The Order, of course, no longer has any force in Korea.

a judge and as many assistant judges as may be from time to time required, which judges are to be appointed by the King, to hold office during his pleasure, and must be members of the Bar of England, Scotland, or Ireland, of not less than seven years standing. Two judges constitute a quorum.

To the Supreme Court is given exclusive original jurisdiction, civil as well as criminal, for the district of the consulate of Shanghai, and concurrent jurisdiction, civil and criminal, with the Provincial Consular Courts in other parts of China.

Further defining matters of jurisdiction and procedure, the order reads:

SECTION 25. Where any case, civil or criminal, commenced in a Provincial Court, appears to that court to be beyond its jurisdiction, or to be one which for any other reason ought to be tried in the Supreme Court, the Provincial Court shall report the case to the Supreme Court for directions.

The Supreme Court may of its own motion, or upon the report of a Provincial Court, or on the application of any party concerned, require any case, civil or criminal, pending in any Provincial Court to be transferred to, or tried in, the Supreme Court, or may direct in what court and in what mode, subject to the provisions of this order, any such case shall be tried.

SECTION 26. The Supreme Court and every Provincial Court shall be auxiliary to one another in all particulars relative to the administration of justice, civil or criminal.

SECTION 27. Every judge and officer of the courts established under this order shall, as far as there is proper opportunity, promote reconciliation and encourage and facilitate the settlement in an amicable way and without recourse to litigation, of matters in difference between British subjects, or between British subjects and foreigners in China (or Korea).

Juries and assessors are provided for. The order declares (Sections 32 and 33):

A jury shall consist of such number of jurors, not more than twelve nor less than five, as may be determined in accordance with Rules of Court. . . .

In civil and criminal cases the like challenges shall be allowed as in England—with this addition: that in civil cases each party may challenge three jurors peremptorily.

A jury shall be required to give an unanimous verdict, provided that, with the consent of parties, the verdict of a majority may be taken in civil cases.

An assessor shall be a competent and impartial British subject of good repute, nominated and summoned by the court for the purpose of acting as assessor.

In the Supreme Court there may be one, two or three assessors as the court thinks fit.

In a Provincial Court there shall ordinarily be not fewer than two and not more than four assessors. Where, however, by reason of local circumstances, the court is able to obtain the presence of one assessor only, the court may, if it thinks fit, sit with one assessor only; and where, for like reasons, the court is not able to obtain the presence of an assessor, the court may, if it thinks fit, sit without an assessor—the court, in every case, recording in the minutes its reasons for sitting with one assessor only or without an assessor.

An assessor shall not have any voice in the decision of the court in any case, civil or criminal; but an assessor dissenting, in a civil case, from any decision of the court, or in a criminal case, from any decision of the court or the conviction, or the amount of punishment awarded, may record in the minutes his dissent, and the grounds thereof, and shall be entitled to receive without payment a certified copy of the minutes.

Cases of treason or murder, it is provided, must be tried on a charge before the Supreme Court with a jury.

In cases of rape, arson, housebreaking, robbery with violence, piracy, forgery, or perjury, and other cases where it appears to the court, before trial, that the

charge, if proved, would warrant a heavier penalty than three months' imprisonment with hard labor or a fine of £20, or both, the trial must be on charge with a jury or assessors, but may, with the consent of the accused, be tried without assessors or jury. In the Supreme Court, when the accused does not so consent, the charge must be by a jury unless the court is of opinion that a jury cannot be obtained.

> The Supreme Court may, for any special reason, direct that any case shall be tried with assessors or a jury, and a Provincial Court may, for any special reason, direct that any case shall be tried with assessors. In each such case the special reasons shall be recorded in the minutes.

Summary trial of minor offenses, that is, without necessity of charging, is provided for, but no greater punishment may be awarded than imprisonment for three months or a fine of £20, or both.

The order lays down detailed requirements regarding preliminary examinations of persons accused of crime, the presentation of charges of crime, of the punishments that may be awarded, inquests, apprehension and custody of accused persons, bail, local jurisdiction, etc.

The order enumerates a number of acts which are to be deemed crimes if committed in China, but provides generally (Section 35):

> Except as regards offenses made or declared such by this or any other order relating to China or Korea, or by any rules or regulations made under any order. . . .
>
> Any act that would not by a Court of Justice having criminal jurisdiction in England be deemed an offense in England, shall not, in the exercise of criminal jurisdiction under this order be deemed an offense, or be the subject of any criminal proceeding under this order.

Subject to the provisions of this order, criminal jurisdiction under this order, shall, as far as circumstances admit, be exercised on the principles of, and in conformity with, English law for the time being, and with the powers vested in the Courts of Justice and Justices of the Peace in England, according to their respective jurisdiction and authority.

In criminal cases appeals may be taken by the accused from a Provincial to the Supreme Court.

The full Supreme Court [*i. e.*, two or more judges on the bench] sitting without a jury or assessors, shall hear and determine the matter, and thereupon shall reverse, affirm, or amend the judgment given, or set it aside, and order an entry to be made in the minutes that, in the judgment of the Supreme Court, the person ought not to have been convicted, or order judgment to be given at a subsequent sitting of the Provincial Court, or order a new trial, or make such other order as the Supreme Court thinks just, and shall also give all necessary and proper consequential directions (Section 85).

There shall be no appeal in a criminal case to His Majesty the King in Council from a decision of the Supreme Court, except by special leave of His Majesty in Council (Section 87).

Procedure in civil matters is dealt with by the order in separate parts dealing respectively with Arbitration, Bankruptcy, Admiralty, Matrimonial Causes, Lunacy and Probate, and Administration. The law to be applied with regard to Mortgages and Bills of Sale is set forth with some particularity. But, in general, with regard to the substantive law, it is declared (Section 89) that—

Subject to the provisions of this order, the civil jurisdiction of every court acting under this order shall, as far as circumstances admit, be exercised on the principles of, and in conformity with, English law for the time being in force.

In cases involving more than £25, appeals may be taken as of right from the Provincial Courts to the Supreme

Court. In other cases leave to appeal may be given by the Provincial or by the Supreme Court in its discretion. Where more than £500 is involved, the aggrieved party may apply on motion to the Supreme Court for leave to appeal to His Majesty in Council; or the Supreme Court in other cases, if it deems it just or expedient to do so, may give leave to appeal to the Privy Council.

In all civil cases juries may be used at the suggestion of the parties or, if deemed desirable, by the court. In suits in the Supreme Court involving £150 or over, the cases must be heard with a jury if asked for by either party seven days before the day appointed for the hearing. The Supreme Court may, if it thinks fit, hear any action with assessors. Provincial Courts are obliged to hear with assessors actions involving £150 or more, and may, in their discretion, hear with assessors in other cases.

To the British Minister to China is given authority to make regulations (termed "King's Regulations") with regard to the following matters (Section 155):

(*a*) For the peace, order, and good government of British subjects in relation to matters not provided for by this order, and to matters intended by this order to be prescribed by regulation.

(*b*) For securing the observance of any treaty for the time being in force relating to any place, or of any native or local laws or custom, whether relating to trade, commerce, revenue, or any other matter.

(*c*) For regulating or preventing the importation or exportation in British ships or by British subjects of arms or munitions of war, or any parts or ingredients thereof, and for giving effect to any treaty relating to the importation or exportation of the same.

(*d*) For requiring returns to be made of the nature, quantity, and value of articles exported from or imported into his district, or any part thereof, by or on account of any British subject who

is subject to this order, or in any British ship, and for prescribing the times and manner at or in which, and the persons by whom, such returns are to be made.

Regulations, made or adopted, under the order do not go into force, except in emergencies, until approved by the British Crown, and published by the British Minister at Peking.

Finally, Section 160 deserves quotation. It reads:

> Nothing in this order shall deprive the [Supreme] Court of the right to observe, and to enforce the observance of, or shall deprive any person of the benefit of, any reasonable custom existing in China (or Korea), unless this order contains some express and specific provision incompatible with the observance thereof.

The Law Enforced in the Extraterritorial Courts. The question as to the substantive law to be enforced in the consular and other extraterritorial courts in China has been by no means a simple one. Upon the part of the Chinese it has been argued that this law should be that of China, thus limiting the scope of the extraterritorial privilege enjoyed by foreign defendants to the right to have his rights or obligations, as determined by the local law, adjudicated upon by officials of, and according to judicial procedures sanctioned by, the laws of their own respective countries. Upon the part of foreigners it has been argued that their own laws, substantive as well as procedural, should be applied by the extraterritorial tribunals; qualified, however, by the admission that there is an obligation upon the part of these tribunals to enforce local police and other laws, especially laws regarding real property, so far as these laws are reasonable and are not inconsistent with the laws of the defendant's country.

The problem thus presented is stated, and a reasonable line of action to be taken by foreigners is suggested, in an able memorandum, prepared in 1879, by George F. Seward, American Minister at Peking, and sent to the Secretary of State at Washington.[32] Mr. Seward says:

It is true that of late the Chinese Government has advanced the proposition that the extraterritorial privileges of foreigners extend only so far as to give them the right of being tried in their own courts, and of being condemned according to the remedies to be found in their own laws; but that the laws of the [Chinese] Empire are, nevertheless, supreme, and that foreigners are as much bound to respect them as natives.

While it may be admitted at once that justice and fair dealing require that foreigners offending against laws rendered necessary in China, as well as elsewhere, by a right regard to the safety and convenience of the communities in which they reside and of the government upon whose soil they stand, should be punished for their offenses, it appears difficult to admit the broad proposition that they are amenable to Chinese law in the same sense as natives of China are, or in point of fact, in any sense which would allow us to assent to the Chinese proposition.

The case indicated in the Chinese circular of March, 1878, will illustrate the point.[33] It is argued that if a given street or passage

[32] *U. S. For. Rels.*, 1880, p. 146.

[33] In this Circular sent by the Chinese Foreign Office (Tsung-li Yamen) to Chinese ministers abroad, the following is the paragraph referred to:

"As regards jurisdiction, i. e., extraterritoriality, by the treaties, foreigners in China are not amenable to the jurisdiction of the Chinese authorities, i. e., they are extraterritorialized. As they have disputes among themselves, their own authorities are to settle them; if they commit an offense, their own authorities are to punish them according to their own national laws. But foreigners claim much more than this; they interpret this extraterritorial privilege as meaning not only that Chinese officials are not to control them, but that they may disregard and violate Chinese regulations with impunity. To this we cannot assent. China has not by any treaty given foreigners permission to disregard or violate the laws of China; while residing in China they are as much bound to observe them as Chinese are. What has been conceded in the treaties in this connection

is closed to the Chinese, and they may be punished for entering it, foreigners must be subject to the same restriction.

It will be admitted at once on the foreign side that it is not lawful for the foreigner to use the given street, and that he may be proceeded against in case he does so. But there is a great divergence between the treatment that he may expect and that which would be meted out against Chinese, for the prosecution in the one place would take the form probably of a civil action for damages, while the Chinese offending would be dealt with criminally. Or, if it should happen that the laws of the country of the given foreigner would permit of a criminal prosecution, it is quite certain that the punishment inflicted would be wholly different in kind and in degree from that to which the native is subject.

There is, of course, very much in the Chinese code which is barbarous in the eyes of Western people. There is also very much that is singular and which is founded upon different conceptions of right or obligation from those prevailing in the West. Chinese law gives to parents, for instance, far broader authority over their children than is usual with us. The father may, it is said, take the life, even, of a worthless or depraved son. And having such authority a corresponding responsibility is sought to be imposed upon him. He may be punished, not only for the offenses of his child, but also because he has not so instructed him that he would not offend. So, a person who has lost property by theft may be punished for not having kept such a watch over his property as to prevent its loss.

It would be idle to say that in such and similar cases foreigners offend against the native law, and that it is the duty of the foreign

is merely that offenders shall be punished by their own national officials and in accordance with their own national laws. For example, if Chinese law prohibits Chinese from going through a certain passage, foreigners cannot claim to go through that forbidden passage in virtue of extraterritoriality. If they go through it, they thereby break a Chinese law; their own national officials are to punish them in accordance with such laws as provide for analogous cases in their own country. In a word, the true meaning of the extraterritorial clause is, not that a foreigner is at liberty to break Chinese laws, but that if he offends, he shall be punished by his own national officials." *U. S. For. Rels.*, 1880, p. 177.

court to punish them. The simple truth is that when foreigners are tried in their own courts and by their own laws no indictments against them can be sustained which do not describe offenses which would be punishable by law if committed at home, or which have been made punishable by some provision of the given treaty or enactment made in pursuance of the treaty.

It is not meant by this to assert that the only obligation of foreigners in China is to regard the laws of their own country. In actual practice it comes to this: that foreigners are bound to observe the laws of the [Chinese] Empire so far as they conform to the laws of their own country. It is an offense against China to commit a murder on Chinese soil. It would not be an offense against China if it was not against the law in China to do murder. The person so offending may be arrested by the Chinese, and they have the right to demand that he shall be tried and punished; in the words of the treaty, "impartial justice shall be done in the premises."

This principle may be carried further, and it may be said that we are bound to provide remedies in cases where the Chinese Government declares unlawful certain acts which are not themselves criminal but which become so in consequence of enactments made for the public advantage. It cannot be said that throwing ballast overboard in a stream is in itself an offense against law, but the throwing overboard of ballast in a stream when it is prohibited by Chinese law, must be considered an improper act, an offense against the nation, and, as such, we are under obligation to provide a remedy, either by acknowledging the validity of the law, adopting it, so to speak, for ourselves, or by enacting a law of our own to meet the case. . . .

It does not seem necessary or possible to abandon the simple proposition that our people may be dealt with only in our own courts and according to our own laws. But so far as we can hold language to the Chinese which will indicate that we stand upon their soil in an attitude of respect and with a determination to sustain the government in the essential attributes of sovereignty, I think—and in so holding I maintain only the views of my government—that we ought not to withhold such language nor fail to sustain it in practice by appropriate action whenever the occasion may arise.

In a later communication, Minister Seward expressed himself upon the point under discussion as follows:

My own view is that we cannot deny the right of the Chinese Government to make rules and regulations affecting all matters within their sovereignty, but that we may scrutinize all rules and regulations made or proposed by them which affect our nationals and object to them if we find them in contravention of treaty stipulations, or suggest their withdrawal or modification if they appear burdensome or unnecessary. Holding to this view, I think also that we may, without offense, endeavor to lead the Chinese to communicate to us in advance all such rules and regulations, in order that we may examine them and state in advance of their publication whether we should be likely to complain of them as in contravention of our treaties.[34]

Dr. Koo's position with reference to this subject, which may be said to be the Chinese position, is as follows:[35]

With reference to the Treaty Powers themselves, it may be said that extraterritoriality entitles them to exercise so much authority over their nationals in China as is necessary to enforce effectively, by judicial methods, the laws declared to be in force by the Emperor of China. What the content of this authority consists of, may easily be comprehended; it includes only the power to regulate, for the purpose of enforcing territorial laws upon their own subjects or citizens in China, questions concerning the machinery of their courts, the law of procedure, the mode of trial, the rules of evidence, the incidence of responsibility, the measure, degree, kind, and manner of punishment, and other kindred matters. The sovereign power of legislation, on the other hand, remains in the Emperor of China unimpaired. He may make any law that he sees fit for the purpose of maintaining the public peace and order, of preserving the decency and morals of the people, of promoting the welfare of his country, or for any other legitimate purpose.

[34] *U. S. For. Rels.*, 1880, p. 239.
[35] *The Status of Aliens in China*, p. 217.

The Law of Real Estate in Extraterritorial Courts. With reference to matters of land law there are peculiar reasons why the extraterritorial courts should pay deference to the local law, for it is a fundamental principle of all systems of jurisprudence that rights of realty should be determined according to the *lex situs*. The considerations involved in this matter are so well set forth in an opinion rendered by the British Supreme Court for China that they will be here quoted.[36] Justice Bourne, speaking for the Court, said:

> I hold that the law of China ought to be applied to the facts of this case. The court administers the law of England (1863 Order in Council, Article 5), but what is the law of England in regard to immovable property situated within the dominions of the Emperor of China? Undoubtedly that rights in respect of such property shall be governed by the *lex situs*, that is, by the law of China.
>
> To apply the law of English realty to land under the sovereignty of China is to disregard the distinction between the real and personal statutes—a fundamental principle of Private International Law which can be traced back through the legal history of the Western world to the time of the Roman Republic, and which is as necessary today as ever. It is true that our extraterritorial rights in China are not rooted in the history of Western law, as are those in the Levant, for they are the creatures of the treaties with China, the earliest of which was ratified in 1842; but I think there is no doubt that the Orders-in-Council, from which the court derives its jurisdiction was framed on the long established lines of an extraterritorial personal law. . . . The principle that land and its incidents are subject to the *lex situs* is not arbitrary, but founded upon cogent considerations of justice and expediency—one of the most obvious of which is that contiguous plots of land should

[36] *Macdonald* v. *Anderson*, Tientsin, January 16, 1904. The opinion is reproduced in Hinckley's *American Consular Jurisdiction in the Orient*, pp. 250-253.

be subject to the same law in regard to such incidents as prescription and servitudes. The land of British subjects at Tientsin is often coterminous with that owned by Frenchmen, Germans and subjects of other Treaty Powers. If the home law of each proprietor is to apply to his land at Tientsin there will be different periods of limitation, prescription for servitudes, etc., according to the nationality of the owner for the time being. . . . The same reasoning excludes the law of the owner's domicile.

Having thus declared that the land law of China should be applied, Justice Bourne turned to a consideration of the problem of determining what that law might be. Referring to a judgment rendered in 1901 by the Privy Council in the case of *Secretary of State vs. Charlesworth Polling & Co.* (a case referring to extraterritorial jurisdiction in Zanzibar), Justice Bourne said:

That case seems by analogy to establish two propositions, that Chinese law ought to be applied by His Majesty's Courts in China to the incidents of land in China, and that His Majesty's judges in China ought to take judicial notice of Chinese law [that is, without formal proof offered in court]. In regard to the first, the greater part of Chinese written law would be void and inoperative in an English court as inconsistent with the policy of English law. . . . Further, Chinese land law consists almost entirely of local custom. A great deal of English law has been uniformly followed for half a century by his Majesty's subjects in China, and has thus acquired the force of Chinese law, e. g., testamentary disposition of land in China according to the English form, and English forms of conveyancing. Where there is no custom, the duty of the Chinese judge is to decide according to good conscience. The British Court would, I conceive, in such cases draw on the civil law as developed by modern continental codes and text writers, including our own law of personal property, which comes in some respects from the same source, cf. Maine's *Ancient Law,* page 283. If a land law so derived is thought too uncertain to support the large commercial interests now centered in Shanghai and Tientsin, legislation alone

can supply the remedy. Rights of limitation and servitudes might be governed by Land Regulation approved by the Treaty Powers, and succession *ab intestato* by Order-in-Council.

In regard to judicial notice, there is in fact no Chinese written civil law. Judicial notice might be taken of the Penal Code of the present dynasty, translated by Staunton, London, 1810, but custom would have to be proved by evidence.

Sources of Law for American Courts in China. If we accept, as, in the main, extraterritorial courts have accepted, the principles stated by Mr. Seward, and quoted above, there still remains the difficulty, in the case of the courts of each of the Treaty Powers, of determining what laws of the country concerned have been made operative outside of the borders of the countries by whose legislative bodies they have been enacted. As to this it will clearly not be practicable to consider, even generally, the practice of each of the Treaty Powers, but it will be advisable to examine into the matter from the American standpoint.[37]

By the Act of August 11, 1848,[38] Congress, after vesting the necessary jurisdiction in American consuls to carry into full effect the Treaty of 1844, went on to provide:

> That such jurisdiction in criminal and civil matters shall in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute said treaty, extended over all citizens of the United States in China (and over all others to the extent that the terms of the treaty jus-

[37] In this examination we are fortunate in having the assistance of a series of recent articles by His Honor Judge Charles S. Lobingier, Judge of the United States Court for China. *Millard's Review*, Oct. 26, Nov. 9, Dec. 14 and Dec. 28, 1918, "American Courts in China."

[38] IX *Statutes at Large*, 276, Sec. 4.

tify or require) so far as such laws are suitable to carry said treaty into effect; but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law shall be extended in like manner over such citizens and others in China; and if defects still remain to be supplied, and neither the common law nor the statutes of the United States furnish appropriate and suitable remedies, the commissioner shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies.[39]

It thus appears that American officials exercising judicial power in China are obliged to look to a number of different sources for the law which they are to apply. These sources may be enumerated as follows:

1. Acts of Congress.
2. The Common Law.
3. Special Decrees and Regulations.
4. Chinese Law.

Those familiar with federal legislation in the United States will know that there is in the Acts of Congress very little substantive law applicable to the ordinary affairs of private life, and, therefore, if we except such comprehensive measures as the so-called Criminal Code enacted a few years ago, not much remains for the guidance of the United States Court for China.[40]

[39] This section is repeated in the Act of 1860, and carried into the Revised Statutes, Section 4086. The term Commissioner referred to the representative of the United States in China.

[40] In some cases Congress has supplied statute law for special courts by enacting that certain general bodies of law shall be applied. For example, in 1801 it was enacted that the laws of the State of Virginia should be considered as in force in the District of Columbia; and, in 1884, that the laws of Oregon should apply in the Territory of Alaska. No such attempt has, however, been made to supply a jurisprudence for the United States Court and the consular tribunals in China. However, the United States

As regards the Common Law as a source of jurisprudence for American tribunals in China, it is to be observed that inasmuch as there is no national or federal common law in the United States, and the bodies of common law in the different States of the Union are by no means similar, the Common Law referred to in the Acts of 1848 and 1860 must have been that of England as it existed at the time of the separation of the American Colonies from the mother country. This was the opinion of the first judge of the United States Court for China, Judge Wilfley, and this view has since been followed by the Court. The jurisdiction of the American courts in China as regards " equity " and admiralty has not been so undetermined as in the case of the common law proper, for in the case of equity these courts have had the guidance of the body of equity jurisprudence which the federal courts have built up as distinct from that of the individual States, and, of course, American admiralty jurisprudence has been wholly a federal product.

Thirdly, as regards Special Decrees and Regulations as a source of law for American tribunals in China, the Act of 1848 provided that the Commissioner from the United States (provided for in the Treaty of 1844) and the consuls might prescribe the forms of processes and the modes of executing them, the manner in which trials were to be conducted, the fixing of fees, giving of bail and other security, etc.—such rules and regulations to go into immediate effect but to be transmitted to the Presi-

Court for China has held in a number of cases that statutes enacted by Congress for the District of Columbia, for Alaska, and for other areas under the direct and exclusive jurisdiction of Congress might be availed of in China. An important instance of this holding was with regard to the federal statute governing the chartering of corporations in Alaska.

dent and laid before Congress for possible revision or annulment.

When, later, the Commissioner was replaced by the American Minister to China, the rule-making authority was transferred to him, where it remained until 1906, when it was placed in the United States Court, the provision of the Act of 1906 upon this point reading as follows:

> The procedure of the said Court shall be in accordance, as far as practicable, with existing procedure prescribed for consular courts in China in accordance with the Revised Statutes of the United States: Provided, however, That the judge of the said United States Court for China shall have authority from time to time to modify and supplement said rules of procedure.

Judge Lobingier, concluding his article in *Millard's Review,* to which reference has earlier been made, says: "Acting under this authority the writer has already promulgated Rules for Admission to Practice in all of these courts,[41] and has sent out for comment and suggestion before promulgation a draft of proposed Rules of Evidence which aim to cover that subject in brief space. So far as the growing business of the Court will permit, it is the writer's intention to follow these with successive drafts of rules on various procedural subjects until the whole field of remedial law is completed."

Foreigners as Plaintiffs in Chinese Tribunals—"Mixed Courts." Thus far in this chapter we have dealt with the jurisdiction and jurisprudence of foreign or extraterritorial courts in China. We have now to consider the practice pursued in cases where Chinese are defendants and which, therefore, are tried in the native courts. Here

[41] These proposed rules were published in *Millard's Review,* Vol. IV, p. 68.

the jurisdiction of the Chinese courts is complete and exclusive, but, in order that the rights of foreign plaintiffs in them may be protected, the treaties provide, as we have seen, that an "assessor" of the plaintiff's nationality shall have the right to be present.[42] As thus constituted the courts have come to be known as "Mixed Courts"—a somewhat misleading title, for they are not similar to the "mixed courts" that exist in the Levant, the assessor having no right to participate in the judgment or to dictate to the Chinese magistrate what his decision shall be. He is there merely to see that the elements of a fair trial are accorded to the plaintiff. If the assessor is convinced that the decision rendered constitutes a flagrant miscarriage of justice, he may protest at the time, and, if, notwithstanding this protest, the decision is not changed, the matter may be referred to the plaintiff's legation at Peking for it to take such action as it may deem best.

In an interesting article contributed to the *Law Quarterly Review*,[43] entitled "The Government of Foreigners in China," the author, Mr. Latter, a British barrister at law of Shanghai, has the following to say of the Mixed Courts of China:

[42] As to the treaty right of the assessor to be present, the following provision from the Sino-American Treaty of November 17, 1880, may be quoted:

"The properly authorized official of the plaintiff's nationality shall be freely permitted to attend the trial and shall be treated with the courtesy due to this position. He shall be granted all proper facilities for watching the proceedings in the interests of justice. If he so desires, he shall have the right to present, to examine, and to cross-examine witnesses. If he is dissatisfied with the proceedings, he shall be permitted to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case." *Customs Treaties*, I, p. 738.

[43] Vol. XIX (1903), pp. 316-325.

Here we no longer have an extraterritorial court or the limitations or defects of extraterritoriality. The Chinese magistrate has complete jurisdiction over all persons in his district who are not exempted therefrom by treaty, and a Nicaraguan is as much under his jurisdiction as a Chinaman. The defects of the Mixed Court (viewed on its civil side) are limited to a complete absence of any system of law and a tribunal competent to administer justice. Chinese law has not yet distinguished between civil and criminal cases. What we should regard as purely civil cases, such as mercantile disputes, when they occur among the Chinese themselves, rarely come into court: they adjust themselves either by reason of the extreme spirit of compromise inherent in the Chinese character, or by the appearance of the 'peace maker' beloved of Chinese society, or by the intervention of the guild of that particular trade. Should they come into court, the unsuccessful party is usually punished in some way or another, for the magistrate is administering good morals to his people, and one party will usually in some way have offended against his conception of them. Chinese law is, in short, aimed entirely at a maintenance of general good principles among the people, and its science consists in a diversity of punishments for offenses against them. In other words, it does not deal with the rights of persons among themselves so much as with a general conception of their duties to the State at large and the penalties for the infraction of such duties; that is to say, in Western language, it is purely penal. The value of such a system of law in settling the disputes of the purely commercial communities of the treaty ports is difficult to discover.

The result of this is that in the Mixed Court there is no system or code of law whatsoever. A case is decided according to a general idea of what the court considers fair. The court is not bound by precedent; it has no fixed procedure; it may decide one thing one day and another the next. It sometimes refers cases to the arbitration of another merchant in the trade, in order that he may decide it according to the custom of the port. But the privacy of such arbitration prevents such customs from crystalizing, and it is a fair generalization to say that in any case when a Chinaman is defendant the result is purely hypothetical, and depends on the

relative strength of the Chinese magistrate and foreign assessor concerned.

The evils of the consular jurisdiction of the Western powers are fully felt in the Mixed Court. The magistrate is a Chinese official of a humble grade; even if he were of a higher rank his knowledge of commercial disputes would not be of much value. The assessor is a junior of his consular service; he is not a member of the legal profession; he can never be a practiced lawyer, and is chosen for his knowledge of Chinese rather than for any legal or judicial qualifications. His duty as a consul is to protect the interests of his nationals, and the Chinese magistrate is fully aware of it. Too often do the proceedings in this court develop into a mere wrangle between the assessor and magistrate, each advocating the cause of his own sovereign's subject. Sometimes the court adjourns in high disagreement. At other times, weary of its civil strife, it tosses the ball back to the litigants and bids them see to it themselves. The writer has personal knowledge of an instance of this latter sort, when the decision of the court was as follows: "This case involves many difficult points, and the parties must settle the matter among themselves and not cause any further litigation."

Mr. Latter, the author we have been quoting, goes on to show also that the present system of consular jurisdiction in China is detrimental to the consular services themselves, for, as the facts actually are, the consuls are obliged to spend much of the time which they owe to their respective governments, in the adjudication of cases in which their own nationals have no real substantial interest. This arises by reason of the fact that the Chinese, in order to avoid local assessments and "squeezes" put their property and businesses in the names of foreigners (for a consideration). It is Mr. Latter's estimate that fully one-half of the lands standing in the names of foreigners in Shanghai are beneficially owned by Chinese, and that one-half of the civil suits brought in the Mixed Court sitting in that city likewise

involve no real interests of foreigners. And yet, in these cases, the consuls of the nominal plaintiffs have to be present and exert their influence.

Shanghai International Mixed Court. Because of its importance and because of some special features exhibited by it, it will be advisable to give a special description of the Mixed Court at Shanghai. In a later chapter an account will be given of the so-called International and French " Settlements " at Shanghai, and it is only necessary to say that the Mixed Court referred to here is that which the Chinese have established with jurisdiction within the International Settlement, that is, which is concerned with cases in which the plaintiffs are nationals of any of the Treaty Powers.

In ports other than Shanghai the courts for the trial of " mixed " cases sit at irregular times whenever cases arise requiring adjudication. At Shanghai, however, the international mixed court has regular days for sitting, and the consular representatives of the Treaty Powers take regular turn in being present as assessors. Thus if an Englishman or an American or the national of any of the other Treaty Powers (except France) is plaintiff in a suit, his case comes up before the court upon the day when the representative of his country will be present as assessor.

A further feature which distinguishes the Mixed Court in Shanghai from the other mixed courts in China is the fact that it asserts a certain amount of jurisdiction over cases in which both or all of the parties are Chinese. Perhaps upon this point we cannot do better than to quote from Morse.[44] He says:

[44] *Trade and Administration of China*, pp. 200 ff.

In criminal cases in which, by Chinese law, the death penalty is or might be inflicted—such as homicide, rebellion, counterfeiting, rape, etc.—the proceedings take the form of a demand for extradition, and, upon a *prima facie* case being made out, the defendant is remitted to the custody and judgment of the Shanghai city magistrate (Hsien) who, though of nominally lower rank than the president of the mixed court, is yet an imperial representative, qualified to administer the criminal law of China. In criminal cases of lesser magnitude the judgment is rendered by the president of the court, but subject to the approval of the foreign assessor sitting with him. This course is followed also in police cases for contravention of municipal regulations, but it is not required that these regulations should have the prior approval of the Chinese authorities, and as occidental and oriental ideas are not always in harmony in such matters as sanitation, nuisances, control of traffic, incidence of license fees, etc., there is here an opening for a judicial review of alien legislation which is not always lost, and it happens occasionally that the opinions of the judge and the assessor do not agree.

Civil cases in China are commonly settled by gild action and are seldom brought before the official tribunals, but the relative uniformity of justice secured by foreign supervision has caused a greater resort to the Shanghai mixed court. When the plaintiff is a foreigner, the ordinary course is followed and the approval of the assessor is held necessary to the judgment of the court. Not infrequently it happens that a case with plaintiff and defendant both Chinese bcomes a mixed case by the interjection of a foreigner into the plaintiff's claim. The Chinese authorities have always tried to distinguish these pseudoclaims, but it is generally held that on them lies the onus of proof of noninterest—not any easy thing to prove. These cases then generally follow the usual course, unless it can be definitely proved that the foreign interest was introduced at the eleventh hour in order to divert the course of justice.

Suits which are admittedly between Chinese on both sides are a bone of contention. One side maintains that, being purely Chinese, they are no concern of the foreign powers and are therefore not subject to the decision of the foreign assessor; the other side holds

that every judicial question arising within the "area reserved for foreign residence and trade" concerns the foreign powers, and that the foreign assessor of the day is bound to exercise an oversight. On both sides, it is felt, but not generally admitted, that there is some reason in the contention of the other, and the assessor is generally passive unless there are evidences of extortion and flagrant injustice, while the magistrate generally puts himself into agreement with the assessor when a municipal regulation comes into the case, neither being too desirous of crystallising the differences and precipitating a conflict. Occasionally, however, when the incompatibility of view can not be compromised a sharply defined issue is made.

The Chinese official view is unimpeachable; appeal is made to the letter of the treaty stipulations granting to foreign powers the right of oversight in cases in which a foreign interest is involved, and only in those cases. The foreign official view is equally unimpeachable. When in the years 1853-1864 the Taiping rebels devastated the country for hundreds of miles around Shanghai many thousands of refugees found there under the foreign flags the protection to life denied them under their own flag. In the ten years which elapsed before the restoration of order these thousands were sheltered within the area reserved for foreign residence, from which it would have been inhuman barbarity to expel them; and while there police and sanitary measures were necessarily adopted to protect the foreign residents from them and them from each other. The impetus thus given, Chinese continued to flock to the foreign settlement of Shanghai, within the limits of which there are today over half a million. There has thus grown up a foreign interest in real estate valued at over two hundred million taels, and a foreign interest in the maintenance of order and the administration of justice among the half million Chinese living under the same jurisdiction as the foreign residents; and the foreign official view is that foreign supervision is necessary over foreign and Chinese residents alike in the interest of foreigners; and, further, that two independent police and justiciary administrations cannot be allowed to function within the same area and that if there is to be one administration it shall be the foreign.

In 1869 formal rules were published by the British Consul at Shanghai, acting under instructions from his Minister at Peking, governing the procedure to be followed by British parties and assessors in causes before the mixed court.[45]

It has been estimated that more cases are tried in this court every year than are tried in possibly any other court in the world. The importance of this tribunal is further enhanced by the fact that its jurisdiction is practically without limit as to questions of life, liberty and property, and that no provision is made for appeals from its decisions. In order to get its work done it

[45] Regarding these so-called Yangkingpang Regulations Mr. Sidney Barton, of the British Legation at Peking, in a recent article entitled "The Shanghai Mixed Court," published in *The Chinese Social and Political Science Review*, March, 1919, has the following to say:

"The Regulations of 1869 were curious in many ways. They did not originate with the foreign authorities; the original proposal was made by the Chinese authorities and after various amendments was eventually agreed upon by the foreign and Chinese officials provisionally for one year. What was originally intended—as is shown by correspondence which passed at the time—was the creation of a Chinese district for the foreign area at Shanghai which would enable the appointment of a Chinese magistrate with a seal and therefore with certain defined powers under the Chinese administrative system as it existed then. It was also pointed out at the time that it was essential that the magistrate appointed should have a proper staff and also a proper salary. Unfortunately, the arrangement which was eventually adopted did not provide for any of these points. Presumably it was found impossible under the then administrative system to create a new district, and consequently no substantive official as the head of that district with the powers which a Chinese official of that rank would have held was ever appointed. A deputy was appointed by the Viceroy of the Province, which was explained as being equal to the appointment by the Emperor. He was given a wooden chop and it was explained that that might be considered as the same thing as a seal."

This fact that the Chinese magistrates presiding in the Mixed Court have been of a lower rank than the magistrate of the city, not to speak of some of the suitors before them, has seriously interfered with the efficiency of the court.

usually sits daily in four divisions, each with a Chinese magistrate and a foreign assessor.

It has been suggested by Judge Lobingier, of the United States Court for China, that an appellate tribunal might be established by drawing in turn judges from the United States and British courts who should sit with a Chinese judge of recognized ability selected by his Government with the approval of the Legations at Peking; and that, to this court might also be entrusted the duty of exercising a general administrative supervision over the Mixed Court.[46] The objection to Judge Lobingier's plan is that it would not tend to enhance the dignity and standing of the courts of first instance—something which is very much needed—and, furthermore, that it would carry with it increased interference in the exercise by the Chinese of their jurisdiction—also a result to be deprecated.

Status of the Shanghai Mixed Court Since 1911. Since 1911 the Mixed Court at Shanghai has had an exceptional status due to the fact that, with the outbreak of the Revolution in 1911, and the loss, for the time being, of control by the central authorities at Peking over the local Chinese authorities at Shanghai, the representatives of the Treaty Powers deemed it necessary to take the court under their complete control in order that it might continue to function and meet the judicial needs of the city which, as a practical proposition, had to be met.

Under the imperial regime, as has been already pointed out, the magistrates of the Mixed Court had been ap-

[46] See Judge Lobingier's article "The International Mixed Court of Shanghai," in *The American Bar Association Journal*, April, 1919 (Vol. v, p. 188). This article also gives an interesting, though brief, account of the origin of the Mixed Court.

pointed by the local Chinese authority, the Shanghai Taotai, and their official salaries paid out of the Taotai's funds. Though nominally independent officials, the magistrates had necessarily acted as subordinates of the Taotai by whom they were appointed and paid, and their decisions, in a very considerable degree, had reflected the policies of the Taotai. The arrest of persons violating the criminal laws of the Empire or the ordinances of the City or international Settlement had, however, been in the hands of the police of the Shanghai Municipal Council, and, pending trial or after conviction, the prisoners had been confined in the Municipal Jail. But, to repeat, the Mixed Court itself was a purely Chinese institution.[47]

After Shanghai, in the closing months of 1911, had declared its independence of the Manchu rule at Peking, the Taotai, being unable to function in the "Native City," asked permission of the foreign consuls to exercise his duties of office within the International Settlement. This request, upon being referred to the Diplomatic Corps at Peking, was refused, and the Consular Body directed to exercise such powers of control as might be necessary to protect foreign life and property and to maintain the status of the International Settlement.

Thereupon the Consular Body issued a public proclamation, dated November 10, 1911, which read as follows:

> Whereas a vast number of Chinese reside and carry on business in the International Settlement, and for cases, whether criminal or civil, a Mixed Court exists; and whereas there is at present no

[47] The court administered the Women's Prison and the House of Detention which latter served as a Debtors' Prison.

authority recognized by the Powers in the control of affairs in Shanghai city and district; and whereas it is essential for the peace and good order of the said Settlement that the said Mixed Court with the prisons thereto attached should continue to carry on their functions, the consuls of the Treaty Powers hereby notify all residents in the said Settlement, foreign and native alike, that by virtue of their position and authority they have as a measure of expediency confirmed Messrs. Kuan Chung, Wang Chia Hsi, and Yeh Tsung Yi in the offices they already hold as the Chinese Magistrates of the said Court to act under the guidance of and in concert with the Assessors of the said Consuls as heretofore, and have authorized the Municipal Council of the said Settlement to direct the Municipal Police to take over the prisons of the said Court and to execute its summons and warrants when bearing the seal of the Senior Consul, and its decrees and orders when countersigned by the proper Assessor, and to maintain and uphold the lawful authority of the said Court in every way. Wherefore, know ye, all classes and conditions, that the present uncertain state of affairs in the Shanghai district does in no way affect the enjoyment of all law-abiding residents in the said Settlement of their former rights, privileges and immunities, and that anyone attempting by force or threat or other form of compulsion to interfere with any such resident in the pursuit of his lawful business or to induce any such resident to join any political party or society or to subscribe to the funds thereof will on detection be arrested and punished as a lawbreaker without any leniency.

There was, of course, no legal or other treaty right empowering this action upon the part of the Treaty Powers, but the necessities of the situation compelled, at the time, this or some similar action. It is, however, significant that the foreign control assumed over the Mixed Court was not surrendered after the Republic was created and recognized by the Powers, and its authority over Shanghai again established, nor, in fact, at the time of the present writing (1920) has the control of the Court

been returned to Chinese hands. Regarded from a strictly legal point of view, it is impossible to justify this refusal of the Powers to yield to the several times expressed request of the Peking government that Chinese control should be re-established. Regarded, however, from the viewpoint of practical administrative efficiency, the Powers have felt themselves justified in retaining their control until the Chinese Government shall be willing to agree to certain reforms which the Powers deem essential to the efficient working of the Court.

In June, 1914, the Doyen of the Diplomatic Body at Peking notified the Chinese Foreign Office that the Mixed Court would be returned to Chinese control if the following propositions were agreed to.

1. The Chinese Magistrates to be appointed by the Chinese Government, but subject to the approval of the Shanghai Consular Body.

2. At the trial of purely Chinese civil cases, a foreign Assessor to be allowed to be present as a representative of the Consular Body.[48]

3. In all criminal cases, sentences involving more than five years' imprisonment to be carried out by the Court itself.[49] The Court to have the power to impose capital

[48] Under the old regime, when this civil jurisdiction was wholly in Chinese hands, justice had often been denied by the refusal of the Court to pay heed to petitioners. It had, indeed, been the practice of the court never to open a case on the first petition, but to keep down the business of the court by proceeding to trial only after it was no longer practicable to refuse hearings to wealthy or especially insistent litigants. After 1911, with the introduction of a foreign Registrar and the establishment of a fixed schedule of fees for filing petitions, and with the appearance before the court of foreign lawyers, and the sending of foreign Assessors to watch the proceedings, the civil business of the court had greatly increased.

[49] The Rules of 1869 had provided that "in cases where Chinese subjects are charged with grave offences punishable by death and the various

punishment, the execution to take place inside the Settlement and supervised by Chinese authorities, but the Magistrates and foreign Assessors to hold joint coroner inquests.

4. All prisons and detention houses under the control of the Court to be administered by the Shanghai Municipal Police.[50]

5. Summonses, warrants, and other writs of the Court to be served and executed by the Municipal Police.[51]

6. Appeals from the Court to the Shanghai Taoyin and the consuls in mixed cases to be continued. In case of disagreement between the Taoyin and the Consul, the decision of the Court to be affirmed.

7. The administrative and financial affairs of the Court to be in the hands of a foreign "Inspector."

There has been much correspondence between the Diplomatic Corps and the Chinese Foreign Office regarding these proposals and some of them the Foreign Office

degrees of banishment, it will still be for the District Magistrate to take action." And by an agreement made in 1906 between the Diplomatic Corps and the Chinese Foreign Office, prisoners deserving more than five years imprisonment had been transferred from the jurisdiction of the Mixed Court to that of the Shanghai District Magistrate. This practice had proved very unsatisfactory. Persons guilty of heinous crimes, it was found, often escaped with no more than a nominal punishment, or their punishment greatly delayed. Accordingly, on December 1, 1911, the Mixed Court Magistrate was informed by the Senior Consul that the five-year limit was suspended and that the Court was authorized to pass sentences without limit, and at its discretion, but that no action upon capital sentences would be taken until a report had been made to the Consular Body and its approval formally given.

[50] The conditions of these prisons and detention houses while under Chinese administration had been very bad indeed.

[51] There had been much corruption, inefficiency, and favoritism under the old regime when these court orders were executed by Chinese "runners" and other Chinese officials.

has declared its willingness to accept; but no agreement has thus far been reached.[52]

Mixed Court in the French Settlement at Shanghai. In addition to the Mixed Court which has been described and which sits in and for the International Settlement at Shanghai, there is also a Mixed Court which functions in the French Settlement. This court has only one "Assessor" who is always a French consular official. The present rules distinguishing the jurisdiction of this court from that of the Mixed Court of the International Settlement were promulgated in 1902.[53] In civil cases between Chinese the suit is brought in the Mixed Court of the Settlement in which the defendant resides; in criminal cases in which foreigners are not involved, and in all police cases against Chinese living in the Settlements the action is brought in the Mixed Court of the Settlement in which the offense was committed; if the plaintiff is a foreigner, but not of French nationality, and the defendant a Chinese living in the International Settlement, the suit is brought in the Mixed Court of that settlement; if the plaintiff is a Frenchman and the defendant a Chinese living in the French Settlement, the Mixed Court of that Settlement has jurisdiction; if the plaintiff is a foreigner of other than French nationality, and the defendant a Chinese resident in the French Settlement, jurisdiction is in the Mixed Court of the International Settlement;

[52] For an account of these negotiations and a statement of the Chinese point of view, see the able article by Mr. Hollington K. Tong, "The Shanghai Mixed Court and the Settlement Extension" in *Millard's Review*, November 15, 1919.

[53] These rules were adopted by the Consular Body at Shanghai, approved by the Shanghai Taotai and approved by the Diplomatic Body at Peking. For their text, see MacMurray, p. 1902/5.

if the plaintiff is a Frenchman and the defendant a Chinese resident of the International Settlement, the suit is heard by the Mixed Court of the French Settlement; in criminal cases in which a foreigner not of French nationality appears as complainant, the Mixed Court of the International Settlement has jurisdiction, but, if a Frenchman is the complainant, the case comes before the Mixed Court of the French Settlement.

Arrests by Chinese Officials. As has been earlier pointed out, foreigners throughout China are subject to arrest by Chinese officials, but must, after arrest, be taken at once for trial before their respective Consuls. In the foreign Concessions or Settlements at the various treaty ports, the Powers maintain their own constabularies for preventing crime and apprehending offenders. As regards, then, the arrest of nationals of the Treaty Powers there has not been any considerable dispute concerning the rights and immunities involved. Controversies, at times very acute, have, however arisen with reference to the right of Chinese officials to arrest Chinese employed by nationals of the Treaty Powers.

In general it has been held that Chinese officers may not go upon premises occupied by Treaty Power nationals, in order to make arrests, or seize goods or papers, without first obtaining the approval of the consular official of the Power concerned. By treaty provisions, the Chinese Government has agreed not to interfere with the employment of Chinese by foreigners. Based upon this engagement, the general practice upon the part of the Powers has been to insist that when the Chinese employee of a Treaty Power national is arrested, immediate notice should be given to his employer. How-

ever, the American Government appears to have asserted a principle broader than this, and, in a case arising in 1914 and involving a Chinese named C. C. Li, to have declared that an employee of an American firm should not be arrested at all, on or off the American premises, without first giving notice to the American employer or his Consul.

In this case the American Minister had held that it was sufficient, in case of an arrest of a Chinese employee outside the premises of his American employer, if notice were immediately given that the arrest had been made, and opportunity given the employer, upon the trial, to show his interest in the matter. This holding was, however, overruled by the authorities at Washington who held that the arrest should not have been made at all, that is, without previous notice. In support of this holding, reference was made to a case, occurring in 1899, in Chinkiang,[54] the essential facts of which were as follows: The Chinese Chief of Police sent to the office of a Mr. Emery, an American, without any request of or reference to the American Consul, and arrested a Chinese in Mr. Emery's employ. Mr. Emery, when he learned this, sent another one of his Chinese employees to the police yamen with his card to demand the man's release and to tell the official that when he wanted to arrest his employees he must apply to the American consul. For thus coming into his presence upon such an errand, this second employee was seized and so severely beaten that his life was endangered, the official himself taking a hand in the beating. The local American Consul at once demanded that the two employees be released and the official con-

[54] *U. S. For. Rels.*, 1900, pp. 394 *et seq.*

cerned severely punished, which demands the American Government later held had been properly made. Candor compels one to say, however, that this Chinkiang case hardly constituted a precedent to support the American contention in the Li case. Li was arrested outside foreign premises [55]; the first employee arrested in the Chinkiang case had been apprehended upon American premises and punished without even notifying the American Consul and requesting him to have the employee turned over to the Chinese officials. And, of course, there was no ethical justification whatever, for the punishment of the second employee who had been sent to the police yamen.

With regard to the arrest in foreign "Settlements" of resident Chinese, whether employed by foreigners or not, the practice is that the Chinese authorities are required to have the warrants countersigned by the Senior Consul and the actual arrests made by the foreign police. Also, the accused is given the right to a preliminary hearing before a mixed court before being removed from the precincts of the Settlements.

Reform of the System of Mixed Courts. There has been a great deal of diplomatic correspondence between the Chinese and Treaty Power Governments in the attempt upon the part of the latter to obtain for the mixed courts not only a more definite jurisdiction, but a better standing and composition so that they may operate more efficiently. As yet, however, it has been found impossible to get the Chinese to designate adequately trained men as judges. The fault has not, however, been

[55] Li was arrested upon the charge that he had stolen or become possessed of a stolen blank check of an American firm, and, upon it, forged the name of an American missionary.

all on one side, for the foreign assessors have themselves been by no means possessed of a legal knowledge and experience such as is demanded for an intelligent oversight over the important interests coming before them.[56]

The basic difficulty, however, has been the very unsatisfactory condition of the Chinese law and its administration. In the Convention of 1876 we find the following characterization of the Chinese system of administering justice:

> There can be no doubt that the Chinese judicial establishment, as it affects foreigners, is unsatisfactory. No code of procedure worthy to be called such exists. The magistrates, secretaries, and constables are often corrupt. Judgments are secured only after a great deal of exertion, and persistent efforts have to be made to secure their execution. Serious annoyances arise from the fact that it is often difficult to discover the officer who has jurisdiction in given cases, and to whom the consular officer should apply to secure a hearing for his countrymen, and again because, so far as foreigners are concerned, no Chinese appellate courts exist. For the latter reason questions which should be decided by appeal can only be treated by political recourse through the diplomatic agents, and become the subject of long and annoying negotiations.

"To this statement should be added," said Minister Seward, in the memorandum to which previous reference has been made,[57] "the further fact that in matters of complaint, both criminal and civil, but particularly in the latter, the Chinese officials frequently place difficulties in the way of the appearance of the prosecutor, and that no adequate records are kept so that attempts to secure revision of their action is attended with unnecessary difficulties. It happens, moreover, that the consular offi-

[56] See *U. S. For. Rels.*, 1906, Pt. 1, pp. 372-407.
[57] *U. S. For. Rels.*, 1880, p. 155.

cer is refused the position and authority at the trial to which he is entitled by treaty, or, if not by treaty, by the necessities of the case as growing out of the peculiarities of the Chinese system."

During recent years the codifying of Chinese law, civil and criminal, substantive and procedural, has been entered upon. There is in qualified force a brief criminal code but as yet this is as far as the reform has extended. And as regards the courts themselves, it cannot be said that they have been greatly improved since the time when Minister Seward wrote. Indeed, so far as the control by the Central Government of China of the courts in the Provinces is concerned, the situation is not as satisfactory under the Republic as it was under the Empire. This lack of control was illustrated while the writer was in China. The Governor of the Province of Chekiang, as an exercise of his own personal judgment abolished certain courts of justice which the Peking Government had established. Upon being criticized for so doing, he replied that the act had already been done and could not be corrected. He was then admonished in the future to let the Central Government know his intentions when he had in contemplation acts of the kind complained of. The Governor thereupon wrote his superiors at Peking that he did not wish to hear anything more about the matter since it was his opinion that the Central Government should never have established the courts in question.

The difficulties that have arisen in the administration of harbor rules and regulations of the maritime customs owing to the lack of power upon the part of Chinese judicial officials to impose upon foreigners penalties for the violations of these rules and regulations will be

spoken of in the chapter dealing with the Chinese Maritime Customs Service.

Disadvantages of the Extraterritorial System to the Chinese. The disadvantages to both Chinese and foreigners of the system of extraterritoriality which has been described in the preceding pages stand out so plainly that no extended analysis is needed to reveal them. They may be enumerated as follows:

To the Chinese the system is objectionable, in the first place, because it is, in substance, if not nominally, in derogation of their territorial sovereignty, and therefore a national humiliation to them.

In the second place, it means that not only in civil matters but with regard to the punishment of persons who have violated their laws or committed acts of violence against their persons, they are obliged to have resort to tribunals and to laws which are foreign to them, and which in many cases do not, in the penalties which they supply, satisfy their sense of justice and expediency and their ideas of vicarious responsibility. Indeed, in many cases, the injured persons have no means of knowing whether any penalties at all are actually imposed and carried out. In very many cases, also, the nearest foreign official before whom they have to take the case is hundreds of miles distant from the place where the cause of action has accrued; and this, in a country largely without railways and almost wholly without highways, is a very serious matter. It necessarily often means that the witnesses and other evidence cannot possibly be produced at the trials.

Thirdly, even in those cases in which the jurisdiction

is in their own courts, the Chinese have to submit to the presence of foreign assessors who not infrequently, but perhaps usually on good ethical grounds, interfere with the functioning of these courts.

In the fourth place, the extraterritorial system is especially objectionable to the Chinese, and a hindrance to their attempts to maintain law and order within their own borders, when its privileges are claimed by, and have to be conceded to, the Chinese who have come into China from Formosa or from Korea into Manchuria and assert their technical Japanese citizenship. The same is true with regard to Chinese born in the Philippines or in continental United States, and emigrating to China. Also the same is true of the Chinese from French Indo-China crossing the border into Yunnan. These Chinese are of course not different from the other Chinese; in many cases they go far into the interior and live and do business exactly like their neighbors, and yet are able to claim Japanese or American or French citizenship and therefore, when defendants, immunity from the jurisdiction of Chinese tribunals. And, it does not need to be added that abundant opportunity is thus offered to Japan or the United States, or to France, if it sees fit to bring claims against the Chinese Government upon the ground that their respective nationals have not been properly protected or treated by the local authorities.

In the fifth place, it has been found impossible to avoid the abuse of the extraterritorial system which consists in nationals of the Treaty Powers lending their names, and therefore the protection of their consuls, to purely Chinese concerns. That is, as a matter of friendship, or more often in return for moneys paid, the Chinese business or

property obtains a foreign status when, in fact, no substantial foreign interest or control exists.

Finally one cannot shut his eyes to the fact that there is usually a strong bias in favor of his own nationals upon the part of the consul or other foreign official who tries the cases in which the Chinese are plaintiffs or petitioners. As a comparatively recent writer has truly said:

> The first duty of a consul is to protect the interests of his sovereign's subjects; it is scarcely consistent to add to that duty the task of administering justice when a complaint is brought against that subject; and the duties of protection of a class and the administration of impartial justice between that class and others cannot but clash. Only too often is the verdict of the extraterriorial court a formula as of course "judgment for the defendant," and the defendant has then every reason to be satisfied that he has an efficient consular service.[58]

Disadvantages of the Extraterritorial System to Foreigners in China. To foreigners in China the extraterritorial system presents the following disadvantages.

In the first place, so long as it is maintained it remains practically impossible for the Chinese government to open up the entire country to trade, manufacturing, and residence by the foreigner. It has been found barely feasible to permit missionaries to settle outside the treaty ports, and, in connection with their work, to engage in

[58] "The Government of Foreigners in China," *Law Quarterly Review*, vol. XIX (1903), 316. For a further discussion of the disadvantages and evils inherent in the extraterritorial system, see the elaborate memorandum of Sir Robert Hart, entitled "Inspector General's Proposals for the Better Regulation of International Relations," submitted in 1876. This memorandum is given entire as Appendix D to Morse's *International Relations of the Chinese Empire*, Vol. II.

industry or trade to a very small extent, but with regard to all others it is but natural that the Chinese should be unwilling to permit them to establish residences and trading or manufacturing plants away from the Treaty Ports as long as they are so largely exempted from the operation of the local laws and the jurisdiction of the local courts. This, then, is one of the heavy prices which the foreigner pays in return for the extraterritoriality which he enjoys in China.

In the second place, the extraterritorial system means a multiplicity of courts. Each nation is obliged to maintain tribunals for its own nationals at all of the Treaty Ports.

In the third place, the courts are presided over by officials who are not, for the most part, trained in the law. This disadvantage is, of course, not absolutely inherent in the system, but, as a practical proposition, it is necessary to vest jurisdiction in the consuls, of whom it is not feasible to require that they should, before appointment, have become trained in the law and the science of its administration. Great Britain, by the establishment of the Supreme Court for China, and the United States, by the establishment of the United States Court for China, have partially corrected this evil, but only partially, for, after all, these tribunals are able to try only a comparatively small portion of the many cases adjudicated in China in which British and American citizens are defendants.

Again, as we have seen, there is great difficulty under the extraterritorial system in determining what law shall be applied by the foreign courts. Finally, also, is the very serious disadvantage flowing from the fact that

extraterritorial courts necessarily have only a personal jurisdiction, that is, over the persons of the defendants. This defect is dwelt upon by Mr. Latter, from whose illuminating article we have earlier had occasion to quote. He says: [59]

In its administration of justice the system fails from two causes: first, from the fact that justice is administered by consular, not judicial officers; secondly, from the inherent limitations of the extraterritorial court having merely personal jurisdiction. The British Court in China, for instance, has power only over British subjects in China. It is the sole tribunal in which cases against a British subject in China can be tried, but it must be noticed its powers are limited to and extend only over that British subject. If, therefore, a Chinaman sues a British subject, the court has no control over that Chinaman. If he perjures himself the court cannot punish him, or again, it cannot commit him for contempt of court. The Chinaman can only be prosecuted or punished in a Chinese court and according to Chinese law, and it has been remarked that perjury is to a Chinaman an offense as venial as punning to an Englishman. The only means that foreign courts have of obtaining control over a Chinese plaintiff is to require him to make a deposit of money as security for costs. . . . From the same want of control over a plaintiff of another nationality arises another grave flaw in the extraterritorial system. If the defendant has no defence against the plaintiff but has a counterclaim of equal or greater amount, the court cannot entertain the counterclaim, however obvious the validity of the counterclaim may be. The counterclaim is a claim against a man of another nationality, and can be heard only in the court of that nationality, and tried according to the law of that nationality. . . . Another great weakness of the system, also arising from the fact that the jurisdiction of the foreign courts is entirely personal, appears in all questions relating to land. . . . Does the fact that a British subject owns land in China vest that land with all the character-

[59] "The Government of Foreigners in China," *Law Quarterly Review*, Vol. XIX (1903), 316.

istics of land in England? It has been tacitly assumed that it does, and lawyers employ the English form of conveyance in transferring land. But the assumption is contrary to the theory of English law, which is that the law which governs land is the *lex loci rei sitae,* that is, in this case, the law of China, and is completely at variance with a recent decision of the Privy Council on an appeal from the court of Zanzibar where a similar system of extraterritoriality prevails. . . . The fact is that the lawyers in Shanghai and other treaty ports in China do not really know what the law applicable to land held by British subjects and other foreigners really is.[60]

Possible Abolition of Extraterritoriality in China. With disadvantages and evils such as have been enumerated, it is not surprising that the Chinese should be anxious to have the extraterritorial system abolished from their country, or that this desire should have met with a certain amount of support from foreigners as well.

In the so-called Mackay Treaty of 1902 with Great Britain, Article XII reads as follows:

> China having expressed a strong desire to reform her judicial system, and to bring it into accord with that of Western nations, Great Britain agrees to give every assistance to such reform, and she will also be prepared to relinquish her extraterritorial rights when she is satisfied that the state of the Chinese laws, the arrangement for their administration, and other conditions warrant her in so doing.

This provision also appears in almost identical terms in the Treaties of 1903, of Japan and of the United States, and in that of 1908 of Sweden with China, but nothing has resulted from it because, in fact, China has made little progress in the reform of her laws and judicial system, and under any circumstances it will not be

[60] It is, however, to be noted that though the British form is used, all land transfers are recorded in the proper Chinese land offices.

practicable to abolish extraterritoriality until the consent of all the Treaty Powers has been obtained.

Argument of Chinese Delegation at Paris. Included among the matters urged by the Chinese Delegation at the Paris Conference for fixing the terms of the treaty of peace with Germany, was one relating to the abolition in China of the extraterritorial judicial powers exercised by foreign consuls. The arguments advanced by the Delegation in support of this proposition may be summarized as follows:

Several of the friendly Powers have already formally recognized that this reform is desirable, and have explicitly promised that they will agree that this may be effected as soon as China herself can make the necessary reforms in her own system of courts and in the laws which they are to enforce. While it is not claimed that China has brought her laws and judicial organization to a state of perfection equal to that of the most advanced nations, yet she has made such progress as to warrant her in being permitted to rid herself of the extraterritorial rights now possessed by foreigners within her borders. Among other improvements effected the following were enumerated:

(1) China has adopted a constitution providing for a separation of governmental powers, assuring to the people their inviolable fundamental rights of life, liberty and property, and guaranteeing the complete independence and protection of judicial officers and freedom from executive and legislative interference in the execution of their official duties; (2) China has prepared five codes (criminal, civil, commercial, civil procedure, and criminal procedure), some of them being already in pro-

visional force; (3) three grades of new courts have been established (district, court of appeal, and a Supreme Court at Peking), and by their sides a system of procuratorates; (4) civil and criminal causes have been separated, publicity of trials provided for, rules of evidence reformed, corporal punishments to coerce confessions abolished, and rules provided for the creation of a legal profession, entrance to which is made dependent upon the passing of regular examinations; (5) the judicial officers of all courts, high and low, are required to have legal training, and, in many cases, they have studied at foreign universities; (6) the prison and police systems have been improved.

The defects in the present extraterritorial system emphasized by the Delegation were the following: (1) What constitutes an offense or a legal cause of action as determined in the consular courts of one of the Powers is often not so held in the courts of the other Powers: thus inequality of rights and legal confusion results; (2) There is a lack of effective control over witnesses or plaintiffs of a nationality other than that of the court. "Where the testimony of a foreign witness of a nationality different from that of the defendant is required, the court is dependent upon his voluntary action, and if, after he has voluntarily appeared, he should decline to answer questions, he could not be fined or committed for contempt of court, nor could he be punished by that court if he should commit perjury. So also a foreign plaintiff cannot be punished by that court for perjury or contempt of court. . . .[61] If the defendant has no defense against

[61] An American lawyer was recently suspended from practice by the United States Court for China because of unprofessional conduct in a case before a British court.

the plaintiff but has a counter-claim, the court cannot entertain the counter-claim, however obvious the validity of that counter-claim may be ''; (3) There is difficulty in obtaining evidence when the crime is committed far in the interior; (4) There is a conflict between the consular and judicial functions of the person holding the courts. '' When a complaint is brought against his nationals, the duty of protection of a class and the administration of justice between that class and others cannot but clash.''

Upon these grounds the Chinese Delegation at Paris asked that the Powers should agree to the abolition of the entire system of extraterritoriality as soon as China should put into force the five codes that have been mentioned, and complete the establishment of new courts in all the districts where foreigners reside. This she would be able to do by the end of the year 1924, the Delegation asserted.

The Delegation furthermore asked that the Powers agree that the following changes in the present system be immediately made:

''(*a*) That every mixed case, civil or criminal, where the defendant or acused is a Chinese, be tried and adjudicated by Chinese courts without the presence or interference of any consular officer or representative in the procedure or judgment.''

'' (*b*) That the warrants issued or judgments delivered by Chinese courts may be executed within the concessions or within the precincts of any building belonging to a foreigner, without preliminary examination by any consular or foreign judicial officer.''

With regard to the foregoing argument of the Chinese Delegation the general observation may be made that in

China, to a peculiar extent, there is a difference between the regulations and orders that are formulated by the Government and the results that are actually attained under them. Thus a false impression is produced if the statements are accepted at their full face value that at present Chinese judges are required to be learned in the law, that they are exempt from executive or legislative interference in the execution of their duties of office, and that the national constitution, now in force, secures to individuals adequate protection in matters of life and property. If the writer at this point may inject a personal opinion it would be that though the abolition of the extraterritorial system is a highly desirable end from the standpoint of the foreigner as well as from that of the Chinese, it would not be well to attempt to do this until it is made certain, as a matter of actual fact, and not as one of paper regulation or declared intention, that there exists in China a fairly complete body of ascertainable law administered by a system of courts which by reason of the learning, experience, probity and freedom from political or executive interference of their presiding judges commands the confidence of the Western Powers. It is the author's opinion that it is doubtful whether, without foreign aid, the Chinese will be able to create a judicial organization that will actually function so as to satisfy Western requirements. To his mind the most promising mode by which the Chinese could be aided in bringing about a situation under which it would be expedient to abolish extraterritoriality would be for the Powers to permit the Chinese, as a first step, to establish courts for the trial of cases in which foreigners are parties either as defendants or plaintiffs, that would be

truly "mixed" in character; that is, tribunals presided over by two or more judges of whom one at least should be a foreigner learned in the law and experienced in its administration. These courts would be Chinese courts, and the judges Chinese officials, the judges who are foreigners, however, to be appointed upon the nomination of, or at least with the approval of, the foreign offices of the Treaty Powers. In those cases in which the judgments rendered are not approved by the foreign judge, a right of appeal should lie to a superior court and the cases heard before a panel of judges of whom a majority should be of foreign nationality. If it should be found that the Chinese authorities and the Chinese judges were disposed to give whole-hearted co-operation in this scheme, and satisfactory results were obtained, the participation of the foreign judges might be gradually lessened, until the Chinese judicial system would become fully freed from all extraterritorial elements. In other words, China might be started upon the road along which the Kingdom of Siam has already made such considerable progress.

Japanese "Police Boxes" in China. In connection with the extraterritorial privileges enjoyed by them in China, the Japanese have claimed a right which has not been put forward by any of the other Powers and which has been strenuously objected to by the Chinese, though they have not succeeded in preventing its actual exercise in Fukien, in Manchuria and in some other parts of their country. This right, which the Japanese have claimed and exercised, has been to maintain police officials and police stations and jails or houses of detention in

connection with their consulates. This right they have attempted to found upon the treaty provisions which grant to them the rights of residence and trade in the Treaty Ports, and since 1915, throughout Manchuria.

In 1916 the establishment of these "police boxes," as they are termed, in the city of Amoy was protested against by the Provincial Assembly of the Province of Fukien, which sent to the national Parliament at Peking a memorial from which the following may be quoted as descriptive not only of what had been done but of the grounds upon which the Japanese had attempted to justify their action:

On account of the geographical contiguity of Amoy to Formosa and the Peng-hu Islands, a large number of Japanese naturalised subjects have settled in Amoy. Countenanced by the Japanese, these aliens have often disturbed the peace and created disorder in various forms. Under the ægis of the Japanese consulate, such law-breakers have been immune from the interference of the Chinese police authorities who are quite powerless to deal with them. Seeing an opportunity for them to advance further in their aggression, the Japanese, under the pretext of controlling their nationals, settled in that part, rented a house at Chien-tao-kow in Amoy in the tenth month of last year. Over the door of the House a notification was posted in which words to the following effect were written: "The sub-Police Station of the Consulate of Great Japan at Amoy." Later on the notification was replaced by a wooden signboard with the same words painted on. Within the sub-Police station was a house of detention. At the same time police barracks were erected at Ssu Tsi Shih. Upon protest of the Commissioner for Foreign Affairs at the port the Japanese Consul stated in reply that the said sub-police station was merely an extension of the Japanese Consulate. In defending his position, he further cited the provision of article 3 of the Chino-Japanese Commercial Treaty and distorted the principle of the provision in such a manner as to construe that in every Japanese consulate there should be a

police station attached to it in order to enable the Japanese consular authorities to exercise control over Japanese nationals. After repeated protests lodged with the Japanese consulate by the Commissioner of Foreign Affairs under the order of the Acting Governor of Fukien, the Japanese finally removed the signboard from the door and hung the same inside the house. But notwithstanding this, the Japanese are still exercising police jurisdiction there. Since the eleventh month of last year, the Japanese have illegally arrested many naturalised Japanese subjects and Chinese subjects in scores of different cases. The attitude of the Japanese Consul towards the protests of the Foreign Commissioner has been unyielding. The only subterfuge the Japanese consul relies upon in answer to the protests of the Chinese authorities is the misinterpretation of the provisions of the treaties.

It does not appear that Japan in her treaties with China has in so many words, or even by reasonable implication, obtained any police rights in the Province of Fukien or in the city of Amoy. She has only those extraterritorial and other consular rights which the other Treaty Powers have.

The matter of Japanese police boxes in Manchuria and Eastern Inner Mongolia has been a more serious matter to the Chinese than it has even in Fukien. In these regions, as will be later more particularly discussed, Japan was able in 1915, as one of the results of her Twenty-one Demands, to obtain special privileges. In these demands Japan at first asked that her nationals should be free to travel, reside and engage in all kinds of business and manufacture throughout South Manchuria and Eastern Inner Mongolia, and (in Group V) that police departments in important places in China should be jointly administered by Japanese and Chinese or that the police departments of those places should employ numerous Japanese. Japan did not succeed in obtaining all of these

demands, but, as to South Manchuria, secured for her nationals freedom of trade, business, travel and residence. It was, however, expressly provided that the Japanese availing themselves of these rights should be required to register with the local authorities, and that they should submit themselves " to the police laws and ordinances and taxation of China." Civil and criminal cases in which the defendants might be Japanese were to be tried in Japanese consular courts, and those in which Chinese were defendants, in the Chinese courts. Civil cases relating to land between Chinese and Japanese were to be adjudicated by delegates of both countries acting conjointly but in accordance with Chinese law and local usage.

On October 18, 1916, the Japanese Minister handed to the Chinese Minister of Foreign Affairs the following *aide memoire* in which, as will be seen, a general right was claimed upon the part of Japan to station police officers in any places in Manchuria or Eastern Inner Mongolia where Japan might deem it desirable:

According to the new treaty concluded last year respecting South Manchuria and Eastern Inner Mongolia, Japanese subjects shall have the right of residence, travel and commercial and industrial trade in South Manchuria, and the right to undertake agricultural enterprises and industries incidental thereto in the eastern part of Inner Mongolia jointly with Chinese subjects. The number of Japanese subjects in South Manchuria and Eastern Inner Mongolia will, therefore, inevitably increase gradually. The Imperial Government of Japan considers it necessary to station Japanese police officers in these regions for the purpose of controlling and protecting their own subjects. It is a fact that a number of Japanese police officers have already been stationed in the interior of South Manchuria and they have been recognized by the local offi-

cials of the localities concerned since intercourse has been conducted between them. The Imperial Government of Japan proposes gradually to establish additional stations for Japanese police officers in the interior of South Manchuria and Eastern Inner Mongolia wherever and whenever necessary. The localities where such stations for police officers are to be established will of course depend upon the number of Japanese subjects residing thereat and therefore cannot be specified in advance. Since this will involve great expense, it is unlikely that many police stations will be established at once. The organization of such stations for police officers will also depend upon the existing conditions of the localities selected and the number of Japanese subjects residing at such places. There will be only a few Japanese police officers at each station as established. The more important duties of such police officers are as follows:

"1. To prevent Japanese subjects from committing crimes;

"2. To protect Japanese subjects when attacked;

"3. To search, arrest and escort Japanese prisoners under the jurisdiction of a Japanese consulate;

"4. To attend to the enforcement of consular orders in connection with civil cases, such as the duties of the registrar;

"5. Investigation and supervision of the personal standing of Japanese subjects;

"6. Control and discipline of Japanese subjects, who violate the provisions of treaties between Japan and China; and

"7. To see that Japanese subjects abide by the provisions of Chinese police regulations when the agreement between Japan and China respecting the same should actually come into force.

"In short, the establishment of stations for Japanese police officers in South Manchuria and Eastern Inner Mongolia is based on consular jurisdiction, and its aim is efficiently to protect and discipline Japanese subjects, to bring about a completely satisfactory relationship between the officials and people of the two countries, and gradually to develop the financial relations between Japan and China. The Chinese Government is requested speedily to recognize the demands precisely as it has the establishment of consulates and consular agents in the interior of South Manchuria in

pursuance of the policy to maintain the friendly relations between China and Japan." [62]

In a *Note Verbale* handed to the Chinese Minister of Foreign Affairs by the Japanese Minister on January 5, 1917, the foregoing *Aide Mémoire* was recited and again called to the attention of the Chinese Government. The action at this time was in connection with the demands which Japan was then making upon China based upon the Chengchiatun Affair.[63] The *Note Verbale* declared:

> The Imperial Government consider that the said demand, in the event of its withdrawal, will expose the Japanese subjects, visiting and residing at those places [in Manchuria and Mongolia] to danger, thus causing trouble and giving rise to serious complications with Chinese officials and citizens. Inasmuch as it is the duty of the Imperial [Japanese] Government to protect Japanese subjects and its right to control them, not only it cannot view such occurrences with indifference, but in view of the friendly relations between the two nations, it also deems it its duty to take precautionary measures. As the stationing of Japanese police officers is but a corollary of the rights of extraterritoriality, not to speak of the fact that it does not in the least prejudice Chinese sovereignty, it will help to improve the relations of the officials and peoples of the two countries and bring about the development of economic interests to no small degree. Therefore the Imperial [Japanese] Government is convinced that the Chinese Government will, without doubt, give its consent, and the Imperial Government has to add that while the Chinese Government is making up its mind and withholding its consent the Imperial Government will nevertheless be constrained to carry it into effect in case of necessity.

Replying to this note, the Chinese Minister of Foreign Affairs called attention to the fact that Japanese subjects in the regions named were obligated by the treaty to

[62] For the text of this *Aide Mémoire*, see MacMurray, p. 1917/2.
[63] See *post*, Chapter XI.

submit to Chinese police laws and ordinances and that there was, therefore, no necessity for the presence of Japanese police officers. The question of police, the Minister declared, could not be associated with extraterritoriality and the Chinese Government could not recognize the stationing of foreign police as a corollary of extraterritorial jurisdiction. The Chinese Minister continued:

> Although the Japanese Minister has repeatedly declared that the said police would not interfere with Chinese local administration and police rights, yet after serious consideration by the Chinese Government the stationing of foreign police within the confines of Chinese territory, no matter under whatever circumstances, is prejudicial to the spirit and form of Chinese sovereignty tending to cause misunderstanding on the part of the people, thus placing an impediment to the friendship of the two nations. As regards the Japanese police stations already established the Chinese Government and the local authorities have repeatedly lodged their protests and have not accorded their recognition, nor is the Chinese Government able to admit the reasons for the stationing of Japanese police officers as stated in the Note Verbale.

In result, the Chinese Government was, upon this occasion, able to avoid making the formal concession which Japan demanded, but she has never been able, in fact, to prevent the Japanese from maintaining troops and police officers at various points in Manchuria and Eastern Inner Mongolia, nor, for that matter, in other parts of China, as, for example, at Hankow where a considerable detachment of soldiers has for some years been maintained. Also, Japan has claimed and exercised the right to keep considerable bodies of troops at various points in Manchuria as "Railway Guards" for the South Manchuria Railway.

It would seem beyond argument that Japan, in the position which she has taken in this matter of police boxes, has acted not only without express treaty authority, but that the right claimed is not involved in the general principle of extraterritoriality as it exists in China—indeed that it is in absolute contradiction to it.

Dr. C. C. Wu, a trained barrister, and former Counsellor of the Chinese Foreign Office, writing upon this matter in 1917, said:

> From actual experience we know that the activities of these foreign police will not be confined to their countrymen; in a dispute between a Chinese and a Japanese, both will be taken to the Japanese station by the Japanese policeman. This existence of an *imperium in imperio,* so far from accomplishing its avowed right of improving the relations of the countries and bringing about the development of economic interests to no small degree, will, it is feared, be the cause of continual friction between the officials and peoples of the two countries.
>
> As to the legal contention that the right of police control is a natural corollary to the right of extraterritoriality, it must be said that ever since the grant of consular jurisdiction to foreigners by China in her first treaties, this is the first time that such a claim has been seriously put forward. We can only say that if this interpretation of extraterritoriality is correct the other nations have been very neglectful in the assertion of their just rights.[64]

Extraterritorial Rights in Leased Territories. This subject is discussed in the chapter dealing with Leased Territories.[65]

[64] These paragraphs are taken from a paper prepared by Dr. Wu in which he described the "Outstanding Cases between China and the Foreign Powers." The paper is published by Mr. Putnam Weale among the Appendices to his *The Fight for the Republic.*

[65] See, *post,* Chapter XI.

APPENDIX A

United States Revised Statutes Relating to Consular Jurisdiction

SEC. 4083. To carry into full effect the provisions of the treaties of the United States with China, Japan, Siam, Egypt, and Madagascar, respectively, the minister and the consuls of the United States duly appointed to reside in each of those countries, shall, in addition to other powers and duties imposed upon them, respectively, by the provisions of such treaties respectively, be invested with the judicial authority herein described, which shall appertain to the office and minister and consul, and be a part of the duties belonging thereto, wherein, and so far as, the same is allowed by treaty.

SEC. 4084. The officers mentioned in the preceding section are fully empowered to arraign and try, in the manner herein provided, all citizens of the United States charged with offenses against law, committed in such countries, respectively, and to sentence such offenders in the manner herein authorized; and each of them is authorized to issue all such processes as are suitable and necessary to carry this authority into execution.

SEC. 4085. Such officers are also invested with all the judicial authority necessary to execute the provisions of such treaties, respectively, in regard to civil rights, whether of property or person; and they shall entertain jurisdiction in matters of contract, at the port where, or nearest to which, the contract was made, or at the port at which, or nearest to which, it was to be executed, and in all other matters at the port where, or nearest to which, the cause of controversy arose, or at the port where, or nearest to which, the damage complained of was sustained, provided such port be one of the ports at which the United States are represented by consuls. Such jurisdiction shall embrace all controversies between citizens of the United States, or others, provided for by such treaties respectively.

SEC. 4086. Jurisdiction in both civil and criminal matters shall, in all cases, be exercised and enforced in conformity with

the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and as far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law, nor the law of equity or admiralty, nor the statutes of the United States furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies.

SEC. 4087. Each of the consuls mentioned in Section 4183, at the port for which he is appointed, is authorized upon facts within his own knowledge, or which he has good reason to believe true, or upon complaint made or information filed in writing and authenticated in such way as shall be prescribed by the minister, to issue his warrant for the arrest of any citizen of the United States charged with committing in the country an offence against law; and to arraign and try such offender; and to sentence him to punishment in the manner herein prescribed.

[Sec. 4088 refers to consular jurisdiction in countries not inhabited by civilized peoples or recognized by any treaty with the United States.]

SEC. 4089. Any consul when sitting alone may also decide all cases in which the fine imposed does not exceed five hundred dollars, or the term of imprisonment does not exceed ninety days; but in all such cases, if the fine exceeds one hundred dollars, or the term of imprisonment for misdemeanor exceeds sixty days, the defendants or any of them, if there be more than one, may take the case, by appeal, before the minister, if allowed jurisdiction, either upon errors of law or matters of fact, under such rules as may be prescribed by the minister for the prosecution of appeals in such cases.

SEC. 4090. Capital cases for murder or insurrection against the government of either of the countries hereinbefore mentioned, by citizens of the United States, or for offenses against the public peace amounting to felony under the laws of the United States, may be tried before the minister of the United States in the country where the offense is committed if allowed jurisdiction; and every such minister may issue all manner of writs, to prevent the citizens of the United States from enlisting in the military or naval service of either of the said countries, to make war upon any foreign power with whom the United States are at peace, or in the service of one portion of the people against any other portion of the same people; and he may carry out this power by a resort to such force belonging to the United States, as may at the time be within his reach.

SEC. 4091. Each of the ministers mentioned in section forty hundred and eighty-three shall, in the country to which he is appointed, be fully authorized to hear and decide all cases, criminal and civil, which may come before him, by appeal, under the provisions of this Title, and to issue all processes necessary to execute the power conferred upon him; and he is fully empowered to decide finally any case upon the evidence which comes up with it, or to hear the parties further, if he thinks justice will be promoted thereby; and he may also prescribe the rules upon which new trials may be granted, either by the consuls or by himself, if asked for upon sufficient grounds.

SEC. 4092. On any final judgment in a consular court of China or Japan, where the matter in dispute exceeds five hundred dollars and does not exceed two thousand five hundred dollars, exclusive of costs, an appeal shall be allowed to the minister in such country, as the case may be. But the appellant shall comply with the conditions established by general regulations. And the ministers are hereby authorized and required to receive, hear and determine such appeals.

SEC. 4093. On any final judgment in any consular court of China or Japan, where the matter in dispute, exclusive of costs, exceeds the sum of two thousand five hundred dollars, an appeal shall be allowed to the circuit court for the district of California,

and upon such appeal a transcript of the libel, bill, answer, depositions, and all other proceedings shall be transmitted to the circuit court, and no new evidence shall be received on the hearing of the appeal; and the appeal shall be subject to the rules, regulations, and restrictions prescribed in law for writs of error from district courts to circuit courts.

SEC. 4094. On any final judgment of the minister to China, or to Japan, given in the exercise of original jurisdiction, where the matter in dispute, exclusive of costs, exceeds two thousand five hundred dollars, an appeal shall be allowed to the circuit court, as provided in the preceding section.

SEC. 4095. When any final judgment of the minister to China, or to Japan, is given in the exercise of original or of appellate criminal jurisdiction, the person charged with the crime or offense, if he considers the judgment erroneous in point of law, may appeal therefrom to the circuit court for the district of California; but such appeal shall not operate as a stay of proceedings, unless the minister certifies that there is probable cause to grant the same, when the stay shall be such as the interests of justice may require.

SEC. 4096. The circuit court for the district of California is authorized and required to receive, hear, and determine the appeals provided for in this Title, and its decisions shall be final.

SEC. 4097. In all cases, criminal and civil, the evidence shall be taken down in writing in open court, under such regulations as may be made for that purpose; and all objections to the competency or character of testimony shall be noted, with the ruling in all such cases, and the evidence shall be part of the case.

SEC. 4098. It shall be the duty of the ministers and the consuls in the countries mentioned in section forty hundred and eighty-three, to encourage the settlement of controversies of a civil character, by mutual agreement, or to submit them to the decision of referees agreed upon by the parties; and the minister in each country shall prepare a form of submission for such cases, to be signed by the parties, and acknowledged before the consul. When parties have so agreed to refer, the referees may, after suitable notice of

the time and place of meeting for the trial, proceed to hear the case, and a majority of them shall have power to decide the matter. If either party refuses or neglects to appear, the referees may proceed ex parte. After hearing any case such referees may deliver their award, sealed, to the consul, who, in court, shall open the same; and if he accepts it, he shall indorse the fact, and judgment shall be rendered thereon, and execution issue in compliance with the terms thereof. The parties, however, may always settle the same before return thereof is made to the consul.

SEC. 4099. In all criminal cases which are not of a heinous character, it shall be lawful for the parties aggrieved or concerned therein, with the assent of the minister in the country, or consul, to adjust and settle the same among themselves, upon pecuniary or other considerations.

SEC. 4100. The ministers and consuls shall be fully authorized to call upon the local authorities to sustain and support them in the execution of the powers confided to them by treaty, and on their part to do and perform whatever is necessary to carry the provisions of the treaties into full effect, so far as they are to be executed in the countries, respectively.

SEC. 4101. In all cases, except as herein otherwise provided, the punishment of crime provided for by this Title shall be by fine or imprisonment, or both, at the discretion of the officer who decides the case, but subject to the regulations herein contained, and such as may hereafter be made. It shall, however, be the duty of such officer to award punishment according to the magnitude and aggravation of the offense. Every person who refuses or neglects to comply with the sentence passed upon him shall stand committed until he does comply, or is discharged by order of the consul, with the consent of the minister in the country.

SEC. 4102. Insurrection or rebellion against the government of either of those countries, with intent to subvert the same, and murder, shall be capital offenses, punishable with death; but no person shall be convicted of either of those crimes, unless the consul and his associates in the trial all concur in opinion, and the minister also approves of the conviction. But it shall be lawful to convict

one put upon trial for either of these crimes, of a less offense of a similar character, if the evidence justifies it, and to punish, as for other offenses, by fine or imprisonment, or both.

SEC. 4103. Whenever any person is convicted of either of the crimes punishable with death, in either of those countries, it shall be the duty of the minister to issue his warrant for the execution of the convict, appointing the time, place, and manner; but if the minister is satisfied that the ends of public justice demand it, he may from time to time postpone such execution; and if he finds mitigating circumstances which authorize it, he may submit the case to the President for pardon.

SEC. 4104. No fine imposed by a consul for a contempt committed in presence of the court, or for failing to obey a summons from the same, shall exceed fifty dollars; nor shall the imprisonment exceed twenty-four hours for the same contempt.

SEC. 4105. Any consul, when sitting alone for the trial of offenses or misdemeanors, shall decide finally all cases where the fine imposed does not exceed one hundred dollars, or the term of imprisonment does not exceed fifty days.

SEC. 4106. Whenever, in any case, the consul is of opinion that, by reason of the legal questions which may arise therein, assistance will be useful to him, or whenever he is of opinion that severer punishments than those specified in the preceding sections will be required, he shall summon, to sit with him on the trial, one or more citizens of the United States, not exceeding four, and in capital cases not less than four, who shall be taken by lot from a list which had previously been submitted to and approved by the minister, and shall be persons of good repute and competent for the duty. Every such associate shall enter upon the record his judgment and opinion, and shall sign the same; but the consul shall give judgment in the case. If the consul and associates concur in opinion, the decision shall, in all cases, except of capital offenses and except as provided in the preceding section, be final. If any of the associates differ in opinion from the consul, the case, without further proceedings, together with the evidence and opinions, shall be referred to the minister for his adjudication, either by entering up

judgment therein, or by remitting the same to the consul with instructions how to proceed therewith.

SEC. 4107. Each of the consuls mentioned in section four thousand and eighty-three shall have at the port for which he is appointed, jurisdiction as herein provided, in all civil cases arising under such treaties, respectively, wherein the damages demanded do not exceed the sum of five hundred dollars; and, if he sees fit to decide the same without aid, his decision thereon shall be final. But whenever he is of opinion that any such case involves legal perplexities, and that assistance will be useful to him, or whenever the damages demanded exceed five hundred dollars, he shall summon, to sit with him on the hearing of the case, not less than two nor more than three citizens of the United States, if such are residing at the port, who shall be taken from a list which had previously been submitted to and approved by the minister, and shall be of good repute and competent for the duty. Every such associate shall note upon the record his opinion, and also, in case he dissents from the consul, such reasons therefore as he thinks proper to assign; but the consul shall give judgment in the case. If the consul and his associates concur in opinion, the judgment shall be final. If any of the associates differ in opinion from the consul, either party may appeal to the minister, under such regulations as may exist; but if no appeal is lawfully claimed, the decision of the consul shall be final.

SEC. 4108. The jurisdiction allowed by treaty to the ministers, respectively, in the countries named in section four thousand and eighty-three shall be exercised by them in those countries, respectively, wherever they may be.

SEC. 4109. The jurisdiction of such ministers in all matters of civil redress, or of crimes, except in capital cases for murder or insurrection against the governments of such countries, respectively, or for offenses against the public peace amounting to felony under the laws of the United States, shall be appellate only: *Provided,* That in cases where a consular officer is interested, either as party or witness, such minister shall have original jurisdiction.

SEC. 4110. All such officers shall be responsible for their conduct to the United States, and to the laws thereof, not only as diplomatic or consular officers, but as judicial officers, when they perform judicial duties, and shall be held liable for all negligence and misconduct as public officers.

SEC. 4111. The President is authorized to appoint marshals for such of the consular courts in those countries as he may think proper, not to exceed seven in number, namely: one in Japan, four in China, one in Siam, and one in Turkey, each of whom shall receive a salary of one thousand dollars a year, in addition to the fees allowed by the regulations of the ministers, respectively, in those countries.

[Sections 4112-4116 relate to the duties and liabilities of the marshals.]

SEC. 4117. In order to organize and carry into effect the system of jurisprudence demanded by such treaties, respectively, the ministers, with the advice of the several consuls in each of the countries, respectively, or of so many of them as can be conveniently assembled, shall prescribe the forms of all processes to be issued by any of the consuls; the mode of executing and the time of returning the same; the manner in which trials shall be conducted, and how the records thereof shall be kept; the form of oaths for Christian witnesses, and the mode of examining all other witnesses; the costs to be allowed to the prevailing party, and the fees to be paid for judicial services; the manner in which all officers and agents to execute process, and to carry this Title into effect, shall be appointed and compensated; the form of bail-bonds, and the security which shall be required of the party who appeals from the decision of the consul; and shall make all such further decrees and regulations from time to time, under the provisions of this Title, as the exigency may demand.

SEC. 4118. All such regulations, decrees, and orders shall be plainly drawn up in writing, and submitted, as hereinbefore provided, for the advice of the consuls, or as many of them as can be consulted without prejudicial delay or inconvenience, and such consul shall signify his assent or dissent in writing, with his name

subscribed thereto. After taking such advice, and considering the same, the minister in each of those countries may, nevertheless, by causing the decree, order, or regulation to be published with his signature thereto, and the opinions of his advisers inscribed thereon, make it binding and obligatory, until annulled or modified by Congress; and it shall take effect from the publication or any subsequent day thereto named in the act.

SEC. 4119. All such regulations, orders, and decrees shall, as speedily as may be after publication, be transmitted by the ministers, with the opinions of their advisers, as drawn up by them severally, to the Secretary of State, to be laid before Congress for revision.

SEC. 4120. It shall be the duty of the minister in each of those countries to establish a tariff of fees for judicial services, which shall be paid by such parties, and to such persons, as the minister shall direct; and the proceeds shall, as far as is necessary, be applied to defray the expenses incident to the execution of this Title; and regular accounts, both of receipts and expenditures, shall be kept by the minister and consuls and transmitted annually to the Secretary of State.

[Sections 4120 and 4122 relate to the expenses of prisons in China.]

APPENDIX B

Act Establishing the United States Court for China

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a court is hereby established, to be called the United States court for China, which shall have exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by United States consuls and ministers by law and by virtue of treaties between the United States and China, except in so far as the said jurisdiction is qualified by section two of this Act. The said court shall hold sessions at Shanghai, China, and shall also hold sessions at the cities of Canton, Tientsin, and Hankau at stated periods, the dates of such sessions at each city to be announced in such

manner as the court shall direct, and a session of the court shall be held in each of these cities at least once annually. It shall be within the power of the judge, upon due notice to the parties in litigation, to open and hold court for the hearing of a special cause at any place permitted by the treaties, and where there is a United States consulate, when, in his judgment, it shall be required by the convenience of witnesses, or by some public interest. The place of sitting of the court shall be in the United States consulate at each of the cities, respectively.

That the seal of the said United States court for China shall be the arms of the United States, engraved on a circular piece of steel of the size of a half dollar, with these words on the margin, "The Seal of the United States Court for China."

The seal of said court shall be provided at the expense of the United States.

All writs and processes issuing from the said court, and all transcripts, records, copies, jurats, acknowledgments, and other papers requiring certification or to be under seal, may be authenticated by said seal, and shall be signed by the clerk of said court. All processes issued from the said court shall bear test from the day of such issue.

SEC. 2. The consuls of the United States in the cities of China to which they are respectively accredited shall have the same jurisdiction as they now possess in civil cases where the sum or value of the property involved in the controversy does not exceed five hundred dollars United States money and in criminal cases where the punishment for the offense charged can not exceed by law one hundred dollars fine or sixty days' imprisonment, or both, and shall have power to arrest, examine, and discharge accused persons or commit them to the said court. From all final judgments of the consular court either party shall have the right of appeal to the United States court for China: *Provided, also,* That appeal may be taken to the United States court for China from any final judgment of the consular courts of the United States in Korea so long as the rights of extraterritoriality shall obtain in favor of the United States. The said United States court for China shall have and exercise supervisory control over the dis-

charge by consuls and vice-consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China. Within sixty days after the death in China of any citizen of the United States, or any citizen of any territory belonging to the United States, the consul or vice-consul whose duty it becomes to take possession of the effects of such deceased person under the laws of the United States shall file with the clerk of said court a sworn inventory of such effects, and shall as additional effects come from time to time into his possesion immediately file a supplemental inventory or inventories of the same. He shall also file with the clerk of said court within said sixty days a schedule under oath of the debts of said decedent, so far as known, and a schedule or statement of all additional debts thereafter discovered. Such consul or vice-consul shall pay no claims against the estate without the written approval of the judge of said court, nor shall he make sale of any of the assets of said estate without first reporting the same to said judge and obtaining a written approval of said sale, and he shall likewise within ten days after any such sale report the fact of such sale to said court, and the amount derived therefrom. The said judge shall have power to require at any time reports from consuls or vice-consuls in respect of all their acts and doings relating to the estate of any such deceased person. The said court shall have power to require where it may be necessary a special bond for the faithful performance of his duty to be given by any consul or vice-consul into whose possession the estate of any such deceased citizen shall have come in such amount and with such sureties as may be deemed necessary, and for failure to give such bond when required, or for failure to properly perform his duties in the premises, the court may appoint some other person to take charge of said estate, such person having at first given bond as aforesaid. A record shall be kept by the clerk of said court of all proceedings in respect of any suchestate under the provisions hereof.

SEC. 3. That appeals shall lie from all final judgments or decrees of said court of the United States circuit court of appeals of the ninth judicial circuit, and thence appeals and writs of error may be taken from the judgments or decrees of the said circuit court of appeals to the Supreme Court of the United States in the

same class of cases as those in which appeals and writs of error are permitted to judgments of said court of appeals in cases coming from district and circuit courts of the United States. Said appeals or writs of error shall be regulated by the procedure governing appeals within the United States from the district courts to the circuit courts of appeal, and from the circuit courts of appeal to the Supreme Court of the United States, respectively, so far as the same shall be applicable; and said courts are hereby empowered to hear and determine appeals and writs of error so taken.

SEC. 4. The jurisdiction of said United States court, both original and on appeal, in civil and criminal matters, and also the jurisdiction of the consular courts in China, shall in all cases be exercised in conformity with said treaties and the laws of the United States now in force in reference to the American consular courts in China, and all judgments and decisions of said consular courts, and all decisions, judgments, and decrees of said United States court, shall be enforced in accordance with said treaties and laws. But in all such cases when such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, the common law and the law as established by the decisions of the courts of the United States shall be applied by said court in its decisions and shall govern the same subject to the terms of any treaties between the United States and China.

SEC. 5. That the procedure of the said court shall be in accordance, so far as practicable, with the existing procedure prescribed for consular courts in China in accordance with the Revised Statutes of the United States: *Provided, however,* That the judge of the said United States court for China shall have authority from time to time, to modify and supplement said rules of procedure. The provisions of sections forty-one hundred and six and forty-one hundred and seven of the Revised Statutes of the United States allowing consuls in certain cases to summon associates shall have no application to said court.

SEC. 6. There shall be a district attorney, a marshal, and a clerk of said court, with authority possessed by the corresponding officers of the district courts in the United States as far as may be

consistent with the conditions of the laws of the United States and said treaties. The judge of said court and the district attorney, who shall be lawyers of good standing and experience, marshal, and clerk shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive as salary, respectively, the sums of eight thousand dollars per annum for said judge, four thousand dollars per annum for said district attorney, three thousand dollars per annum for said marshal, and three thousand dollars per annum for said clerk. The judge of the said court and the district attorneys shall, when the sessions of the court are held at other cities than Shanghai, receive in addition to their salaries their necessary expenses during such sessions not to exceed ten dollars per day for the judge and five dollars per day for the district attorney.

SEC. 7. The tenure of office of the judge of said court shall be ten years, unless sooner removed by the President for cause; the tenure of office of the other officials of the court shall be at the pleasure of the President.

SEC. 8. The marshal and the clerk of said court shall be required to furnish bond for the faithful performance of their duties, in sums and with sureties to be fixed and approved by the judge of the court. They shall each appoint, with the written approval of said judge, deputies at Canton and Tientsin, who shall also be required to furnish bonds for the faithful performance of their duties, which bonds shall be subject, both as to form and sufficiency of the sureties, to the approval of the said judge. Such deputies shall receive compensation at the rate of five dollars for each day the sessions of the court are held at their respective cities. The office of marshal in China now existing in pursuance of section forty-one hundred and eleven of the Revised Statutes is hereby abolished.

SEC. 9. The tariff of fees of said officers of the court shall be the same as the tariff already fixed for the consular courts in China, subject to amendment from time to time by order of the President, and all fees taxed and received shall be paid into the Treasury of the United States.

Approved, June 30, 1906.

MacMurray (Appendix D) adds the following note:

In reference to the effect of the Act establishing the United States Court for China upon previous legislation regarding the exercise of extraterritorial jurisdiction by American Consular Officers acting judicially under regulations and rules of procedure prescribed by the American Minister, the Department of State had occasion to instruct the Legation at Peking, under date of March 2, 1917, as follows:

"You are informed that in the opinion of the Department, the provisions of section 4106 and 4107 of the Revised Statutes, giving authority to the Minister to approve the list of associates summoned by consuls to sit with them in the trial of certain cases, are not abrogated by later legislation, including the Act of Congress of June 30, 1906, creating the United States Court for China and prescribing the jurisdiction thereof.

"With respect to the provisions of the Statutes giving authority to the Minister to make regulations regarding the rules of procedure applicable to the consular courts, you are advised that the Department is clearly of the opinion that Section 5 of the Act of June 30, 1906, should be construed as effecting a transfer of the authority to modify and supplement existing rules of procedure from the Minister to the United States Court for China.

"You are further informed that the Department considers that the power conferred upon the Minister by Section 4086 of the Revised Statutes, to make regulations concerning remedial rights, is not revoked or transferred by the provisions of the Act creating the United States Court or by other legislation. However, in view of the fact that, according to the Department's information, under the holdings and decisions of the United States Court for China in construction of the authority vested in it and in the consular courts, American citizens in China are supplied with remedial rights to an extent apparently quite ample and in view also of the narrow construction which has heretofore been placed upon the authority of the Minister, derived from the provisions of Section 4086 of the Revised Statutes, with respect to the making of regulations concerning remedial rights, it would seem that there would be little, if any, occasion for the Minister to exercise such authority."

CHAPTER III

Foreign Commerce and the Rights of Foreign Merchants in China

Foreign trade with China, both by sea and over land, dates from very early days, but, as we have already seen, not until 1842 was any agreement obtained from the Government at Peking placing this trade upon a definite basis, fixing the customs charges, export and import which might be exacted, and defining the legal or treaty rights which foreign merchants should enjoy in the ports at which they were permitted to trade.[1]

As early as 1793 Great Britain had sent to China the Lord MacCartney mission to secure, if possible, better trading relations between the two countries; and again, in 1816, for the same purpose sent Lord Amherst. Both missions, however, failed to realize their aim. Indeed, Lord Amherst failed even to obtain an audience with the Emperor. In 1842, however, in the Treaty of Nanking, which concluded the so-called Opium War, the Chinese Government was compelled, for the first time, to give express sanction to foreign trade at certain ports, to fix the conditions under which this trade should be carried on, and to give to British traders certain rights of residence in the Empire—all of which regulations and rights were immediately made applicable to the traders of the

[1] Prior to this time China had entered into treaties with Russia dealing with boundaries and overland trade, but these agreements had been limited in scope and had made no attempt to give to traders a definite legal status in the ports of the Empire.

other "Treaty Powers," that is, of those Powers with which China then or later had treaty relations.

Treaty of Nanking, 1842. This treaty of August 29, 1842, signed at Nanking, is of importance not simply as a commercial agreement, but as containing features which, since that time, have characterized the general rights of foreigners resident in China:—the establishment of "treaty ports," the creation of residential "settlements" or "concessions" at these ports, the granting of extraterritorial rights to foreigners, and the imposition by treaties of limitations upon the freedom of China to fix customs dues according to her own fiscal needs or domestic commercial policy.[2] It will therefore be appropriate to consider this treaty with some degree of particularity.

By the treaty of Nanking the island of Hongkong was ceded to Great Britain and the five ports of Canton, Amoy, Foochow, Ningpo, and Shanghai were formally opened to foreign trade. In these "Treaty Ports" it was provided that merchants might reside and carry on trade, and for these purposes build dwellings and warehouses, and it was agreed that consular officials should be appointed to act as the medium of communication between the foreign merchants and the Chinese authorities. It was also provided that the Chinese Government should establish and publish a schedule of customs duties to take the place of the previously uncertain amounts that had been levied upon imports and exports. And, in connection with this last undertaking, the important fact is

[2] The era of railway and other concessions, and the establishment of spheres of interest did not come until forty or fifty years later. See *post*, Chapter XX.

to be noted that it was understood that the customs duties thus fixed should not be increased beyond the amounts then agreed upon. This principle was continued in later treaties, and thus, improvidently—for the Chinese Government did not then see the seriousness of the step nor obtain any real *quid pro quo* for the engagement upon her part—China has since been unable to exercise the right of determining the rates of her own export and import dues. In this respect China is unique among the great Powers of the world.[3] It is true that the Western Powers have been accustomed to enter into special commercial treaties regulating trade between the contracting parties, but in few, if any, cases have these treaties fixed the absolute rates that might be charged upon all exports or imports. Their purpose has been to grant certain reciprocal privileges as regards maximum and minimum rates in general, or to determine the conditions under which specific articles may be exported or imported. The fiscal limitations under which China has suffered since 1842 have thus differed from those created by commercial treaties between the Western Powers in the two important respects that, first, they have fixed a very low rate which has applied to *all* articles of export or import,[4] and second, these limitations having been granted to all the Treaty Powers, China finds herself in the situation that she cannot get rid of them or lessen their severity unless she can obtain the unanimous consent of all these Treaty Powers, and this, up to the present time, she has been

[3] Japan long suffered under the same treaty restriction. She, in turn, imposed the same restriction upon Korea. Siam is still subject to similar restrictions, as is also Turkey in a measure.

[4] There has also been a free list of commodities upon which no duties can be levied.

unable to obtain. Indeed, as will later be pointed out, China has not been able to levy during the recent years even the effective 5 per cent. *ad valorem* duties which her treaties profess to allow her to do.

The following provisions of the Nanking Treaty are of sufficient importance to warrant their textual reproduction:

ARTICLE II. His Majesty, the Emperor of China, agrees that British subjects, with their families and establishments, shall be allowed to reside, for the purpose of carrying on their mercantile pursuits, without molestation or restraint, at the cities and towns of Canton, Amoy, Foochowfoo, Ningpo, and Shanghai; and Her Majesty the Queen of Great Britain, etc., will appoint superintendents, or consular officers, to reside at each of the above named cities or towns, to be the medium of communication between the Chinese authorities and the said merchants, and to see that just duties and other dues of the Chinese Government, as hereafter provided for, are duly discharged by Her Britannic Majesty's subjects.

ARTICLE V. The Government of China having compelled the British merchants trading at Canton to deal exclusively with certain Chinese merchants called Hong Merchants (or Co-Hong) who had been licensed by the Chinese Government for that purpose, the Emperor of China agrees to abolish that practice in future at all ports where British merchants may reside, and to permit them to carry on their mercantile transactions with whatever persons they please.

ARTICLE X. His Majesty the Emperor of China agrees to establish at the ports which are by the second Article of the Treaty to be thrown open for the resort of British merchants, a fair and regular tariff of export and import customs and other dues, which tariff shall be publicly notified and promulgated for general information; and the Emperor further engages, that when British merchandise shall have once paid at any of the said ports the regulated customs and dues agreeable to the tariff, to be hereafter fixed, such merchandise may be conveyed by Chinese merchants to any province or city

in the interior of the Empire of China, on paying a further amount as transit duties, which shall not exceed ——— per cent. on the tariff value of such goods.[5]

It will be seen from the provisions thus given that the Treaty of 1842 did not itself fix the duties that the Chinese Government might collect. This was done by a "Declaration" issued by the Chinese Government June 26, 1843.

By a supplementary treaty with Great Britain, signed October 8, 1843, the rights of foreign traders were further defined. The more important of the provisions of this agreement were as follows:

ARTICLE IV. After the five ports of Canton, Foochowfoo, Amoy, Ningpo, and Shanghai, shall be thrown open, English merchants shall be allowed to trade only at those five ports. Neither shall they repair to any other ports or places, nor will the Chinese people at any other ports or places be permitted to trade with them.

ARTICLE VI. It is agreed that English merchants and others residing at, or resorting to, the five ports to be opened, shall not go into the surrounding country beyond certain short distances to be named by the local authorities, in concert with the British consul, and on no pretence for purposes of traffic.

ARTICLE VIII. The Emperor of China having been graciously pleased to grant to all foreign countries whose subjects or citizens have hitherto traded at Canton, the privilege of resorting for purposes of trade to the other four ports of Foochowfoo, Amoy, Ningpo, and Shanghai, on the same terms as the English, it is further agreed, that should the Emperor hereafter, from any cause whatever, be pleased to grant additional privileges, or immunities, to any of the subjects or citizens of such foreign countries, the same privileges and immunities will be extended to, and enjoyed by, British subjects; but it is to be understood, that demands or requests are not, on this plea, to be unnecessarily brought forward.

[5] *Customs Treaties*, I, p. 352.

This last article is, of course, the familiar most favored nation clause. It is to be noted that the provision is unilateral, that is, not China, but only Great Britain is to benefit by it.

The Treaty of Nanking gave to foreign trade a definite legal standing in China, but by no means marked an end to the conflicts which had previously existed between foreign traders and the Chinese authorities. Since that time questions concerning foreign commerce have related to the following matters: (*a*) the opening up of new "Treaty Ports"; (*b*) the revision of tariff schedules; (*c*) the regulation of transit and other charges upon commodities after importation, or upon commodities proceeding to the ports for exportation; (*d*) the granting of additional rights and privileges to traders resident in China; (*e*) the creation of an efficient maritime customs administrative service; and (*f*) the maintenance of the so-called "Open Door" policy according to which, subject to certain exceptions later to be mentioned, no Treaty Power is to enjoy commercial rights not granted by the Government of China to the citizens of the other Treaty Powers. It will not be feasible to give a wholly separate consideration to each of these subjects, but they need to be borne in mind.

Tientsin Treaties of 1858. The year 1858 marks a second definite stage in the development of the relations of China with the other Powers. As a result of military operations upon the part of the Powers, and a good deal of negotiating, there were signed in that year substantially similar treaties—the so-called Tientsin Treaties—with Great Britain, the United States, France, and Rus-

sia. By these agreements the older treaties were revised, the trade in opium subjected to new regulations, the Yangtze River opened up to navigation by foreign vessels, new treaty ports created, travel and trade in the interior made more secure by a system of passports, a new schedule of customs duties agreed upon, Christian missionaries in China given wider rights of residence and of propaganda, and the right granted by the Chinese Government to the diplomatic agents of the Treaty Powers to come to and reside in Peking. This last privilege the foreign nations had been seeking to obtain since 1842. It was also expressly provided that foreign diplomatic officials should be treated with courtesy and consideration, that they should not be compelled to perform any ceremonies of an undignified or humiliating character, that their correspondence should not be interfered with, and that they should have direct relations with a high minister of state at Peking. These diplomatic rights were made effective in the treaties of 1860 which concluded the war with China caused by the obstruction which the Chinese Government had interposed to the ratification at Peking of the Tientsin treaties.

Treaties of 1902 and 1903. In 1902 and 1903 one more effort was made by China, coöperating with Great Britain, the United States and Japan, to place upon a more satisfactory basis many of the existing conditions relating to trade, finance, currency, mining, joint-stock enterprises, trade-marks, patents, inland navigation, reform of the Chinese judiciary and law as a preparation for the abolition of extraterritoriality, the status of missionaries, etc. The reciprocal undertakings were embodied

in the so-called Mackay Treaty of 1902 between China and Great Britain and the treaties of 1903 between China and the United States and Japan, respectively. Many of the provisions of these treaties have never come into force. This has been due in part to the failure to secure for them the necessary consent of the Treaty Powers; and in part to the failure of China to effect the reforms which were called for.[6] Notwithstanding this fact it is important to consider the provisions of these treaties since they indicate, in a very clear manner, the lines along which, in the future, it may be practicable for foreign nations to coöperate with China for the improvement of present commercial, financial, and administrative conditions in China.

[6] Sections 14 and 15 of Article VIII of the Mackay Treaty provided as follows:

"Section 14. The condition on which the Chinese Government enter into the present engagement is that all Powers entitled to most favored nation treatment in China enter into the same engagements as Great Britain with regard to the payment of surtaxes and other obligations imposed by this article on His Britannic Majesty's Government and subjects.

"The conditions on which His Britannic Majesty's Government enter into the present engagement are:

"(1) That all Powers who are now or who may hereafter become entitled to most favored nation treatment in China enter into the same engagements;

"(2) And that their assent is neither directly nor indirectly made dependent on the granting by China of any political concession, or of any exclusive commercial concession.

"Section 15. Should the Powers entitled to most favored nation treatment by China have failed to agree to enter into the engagements undertaken by Great Britain under this article by the 1st of January, 1904, then the provisions of the article shall only come into force when all the Powers have signified their acceptance of these engagements" [i. e., all the Treaty Powers, whether entitled to most favored nation treatment or not]. *Customs Treaties*, I, p. 554. MacMurray, No. 1902/7.

Specific Rights of Foreign Merchants in China. By the Nanking Treaty, as will be remembered, foreign merchants were given the right to reside and carry on trade at the designated Treaty Ports, and for these purposes to build dwellings and warehouses. By the Supplementary Treaty of the next year it was expressly declared that these merchants might not trade at or resort to any other places, nor even go beyond certain distances, to be agreed upon outside of these ports.

By Article XIII of the "General Regulations" issued in 1843 in pursuance of the Nanking Treaty, it was further provided, in rather general and unprecise language, that foreign merchants in the Ports should enjoy extraterritorial rights.[7] By the Treaty of Tientsin of 1858 the rights of aliens in China were further broadened by the provision that they might be "permitted to travel for pleasure or trade to all parts of the interior, under passports issued by their consuls and countersigned by local authorities."[8]

By the Shimonoseki Treaty of 1895, dictated to China by victorious Japan at the end of the Sino-Japanese War, not only were new Treaty Ports opened up to trade, and steam navigation for vessels for the conveyance of passengers and cargoes in the upper Yangtse, on the Woosung River and the Grand Canal from Shanghai to Soochow and Hangchow permitted, but the general rights of trading in China considerably broadened.

[7] See *ante*, Chapter I, "Extraterritoriality."

[8] The rights enjoyed by traders as well as other aliens resident in the so-called "Settlements" or "Concessions" created in certain of the Treaty Ports have received some consideration in connection with the general subject of Extraterritoriality. They will further be discussed in the sections dealing with "Settlements" and "Concessions."

Thus, among its other provisions, the Treaty, by Article VI, declared:[9]

> Japanese subjects purchasing goods or produce in the interior of China or transporting imported merchandise into the interior of China, shall have the right temporarily to rent or hire warehouses for the storage of the articles so purchased or transported, without the payment of any taxes or exactions whatever.
>
> Japanese subjects shall be free to engage in all kinds of manufacturing industries in all the open cities, towns, and ports of China, and shall be at liberty to import into China all kinds of machinery paying only the stipulated duties thereon.
>
> All articles manufactured by Japanese subjects in China shall, in respect of inland transit and internal taxes, duties, charges and exactions of all kinds, and also in respect of warehousing and storage facilities in the interior of China, stand upon the same footing and enjoy the same privileges and exemptions as merchandise imported by Japanese subjects into China.
>
> In the event additional rules and regulations are necessary in connection with these concessions, they shall be embodied in the Treaty of Commerce and Navigation provided for by this Article.[10]

In accordance with the undertaking contained in the Treaty of Shimonoseki, China signed with Japan the next year (1896) a treaty in which the rights of Japanese traders in the matter of commerce and navigation were set forth in detail.

The treaty of Shimonoseki is also of importance with regard to matters of finance since the indemnity of two hundred million taels, later increased by thirty million taels when the Liaotung peninsula was retroceded, which China undertook to pay to her victorious foe,

[9] The rights granted to the Japanese by operation of the most favored nation clause, contained in the treaties between China and the other Powers, became immediately available to the nationals of those powers.

[10] *Customs Treaties*, II, p. 594. MacMurray, No. 1895/3.

necessitated two Anglo-German loans of £16,000,000 each in 1896 and 1898, loans for which a lien upon the proceeds of the salt tax and the likin, under the control of the Inspector-General of Maritime Customs, had to be given as security. It was in connection with the second of these loans that China had to give the pledge that so long as Great Britain should have a preponderance of trade with China above that of any other country, the Inspector-General should be an Englishman. This pledge was again confirmed in May, 1908.

As a result of the huge indemnities which she was called upon to pay under the Boxer Protocol of 1901, China was obliged still further to mortgage her ordinary and regular revenues. As security for interest charges and periodical payments thus undertaken to be made, the balance of the maritime customs together with the native customs,[11] and the salt tax or "gabelle" were pledged, in so far as these revenues were not already pledged for the payment of other foreign loans.

Treaty Ports. It still remains true that goods may be exported from or imported into China only from or to such places as have been designated for the purpose by the Chinese government. These places now number some seventy-five and are known as "Open" or "Treaty Ports." The latter term is, however, somewhat misleading since, in the case of a number of them, the opening has been by imperial decree, voluntary upon the part of China and not required as a matter of treaty obligation. Furthermore, in a considerable number of cases the "Ports" are not upon the seaboard or even

[11] To be administered in the open ports by the maritime customs service.

upon rivers navigable by ocean-going steamers, but are located far in the interior of China. Since the Sino-Japanese Treaty of 1915, foreigners have throughout South Manchuria many of the rights which elsewhere in China they have only in the Treaty Ports. Article 3 of that agreement reads: "Japanese subjects shall be free to reside and travel in South Manchuria and to engage in business and manufacture of any kind whatsoever." These rights of course have attached to the nationals of all the other treaty powers by operation of the most favored nation clause.

As to the significance of Treaty Ports the following quotation from Morse is illuminating.[12]

> At these ports foreign nations are privileged to establish consulates, foreign merchants are permitted to live and trade, and on the trade at these ports are levied dues and duties according to a tariff settled by both parties by treaty. At some ports are national concessions, as at Tientsin, in which municipal and police administration is under the control of the consul of the lessee power; at others are settlements or reserved areas for residence, as at Shanghai, with municipal organization but at which the power which issues the title deeds is China; at others, including most of the newer ports, there is neither concession nor reserved area, excepting "International settlements" established at a few places by the Chinese authorities. At all the treaty ports, however, there is one common right, the privilege of exempting goods by one payment from all further taxation on movement. On a bale of sheetings imported at Shanghai, a treaty port, the importer will pay once duty at the tariff rate; it may then, perhaps a year later, be shipped to Hankow, a treaty port, without further payment; it may then be shipped to Ichang, a treaty port, without further payment; it may then be shipped to Chung-king, having the privileges of a treaty port, without further payment; but if it then goes on fifty

[12] *Trade and Administration of China*, p. 208.

miles farther, or if, instead of taking the journey of 1,400 miles in three stages to Chung-king, it goes "inland" to a place which is not a treaty port, thirty miles from Shanghai, the bale is liable to the taxation which is levied in China on all movement of commodities not exempted by special privilege. A treaty port may be miles away from the nearest navigable water, it may be the most inland of inland marts, but in matters of taxation and of privilege a broad distinction is drawn between these forty ports and all the rest of China, which, even on the coast, is "inland." This is the one reason underlying the constant demand for the opening of new treaty ports, with all the expense for administrative and preventive work imposed on China, and for the enforcement of extraterritorial rights imposed on the foreign powers.

As regards the ports voluntarily opened by China it is to be observed that resident traders in them do not necessarily enjoy all the rights and privileges which, by treaty, they have been given in the other strictly so-called "Treaty Ports." The Chinese Government indeed has attempted to exercise the right to levy customs dues at these voluntarily opened ports differing from those which she is compelled to levy at the ports opened in pursuance of treaty engagements. This right has, however, been successfully resisted by the Treaty Powers.[13]

The status and methods of governing the foreign "Settlements" or "Concessions" at the Treaty Ports, i. e., the areas marked off in which foreigners may reside and do business, are discussed elsewhere. It may be here observed, however, that the chief political characteristic which distinguishes these voluntarily opened ports from those treaty ports in which foreign "concessions" or "settlements" exist is that municipal administration

[13] See Koo, *The Status of Aliens in China*, pp. 250-252.

and police control remain exclusively in the hands of the local Chinese officials.[14]

Ports of Call. In addition to the Treaty Ports there are in China a number of places known as "ports of call" at which foreign steamers are permitted to stop for the purpose of landing or taking on passengers, and, under certain restrictions, of goods as well. For example, the Chefoo convention of 1876 with Great Britain designates six places on the Yangtze River at which, though not Treaty Ports, "steamers shall be allowed to touch for the purpose of landing or shipping passengers or goods; but in all cases by means of native boats only, and subject to the regulations in force affecting native trade" It is also provided that "produce accompanied by a half-duty certificate may be shipped at such points by the steamers, but may not be landed by them for sale." Also it is expressly stated that "foreign merchants will not be authorized to reside or open houses of business or warehouses at the places enumerated as ports of call."

Limits of Treaty Ports. With regard to the territorial limits of Treaty Ports none of the treaties are definite and this has led to not a little controversy,—the foreigners naturally giving a liberal, and the Chinese a

[14] Cf. Tyau, *op. cit.*, p. 98. By Section 12 of the Sino-British Mackay Treaty of 1902 it is expressly provided with reference to the ports of Changsha, Wanhsien, Nganking, Waichow and Kongmoon, that "foreigners residing in these open ports are to observe the municipal and police regulations on the same footing as Chinese residents, and they are not to be entitled to establish municipalities and police of their own within the limits of these treaty ports, except with the consent of the Chinese authorities." This provision is repeated in the Sino-Japanese Treaty of 1903 (Article 10) with reference, however, only to the Port of Changsha.

narrow, construction to the term. Upon this point Dr. Tyau has the following to say:

Here we have two contrary views as regards the proper limits of a Treaty Port. On the face of it the foreign view certainly seems more reasonable. Upon closer examination, however, it does not seem so convincing. For we are once more face to face with the rule of interpretation, already cited, respecting international servitudes. Now the object of designating a particular city or port as an open port is to reserve a particular area for the residence of foreigners within which they may carry on their legitimate trade and be amenable to their own consular officers. Over this area the territorial sovereign has delegated his right of control and jurisdiction. And, therefore, he has also waived his right to tax foreign property therein. But such a waiver operates to diminish the amount of his revenue, and this diminution is a loss to his treasury. If the area of the locality to be exempt from the levy of likin is increased, then the loss of the territorial sovereign will also increase, since under the treaty tariff he can levy duties on foreign imports to the extent of only five per cent. *ad valorem*. This loss must not be allowed to increase, if the national exchequer is not to suffer further depletion. Therefore, it is within the prerogative of the territorial sovereign to say precisely what part of his territory is to be exempt from the likin levy. The likin exemption area is a species of international servitudes, and, therefore, all doubts in this connection must also be solved in the grantor's favor.[15]

However, in a joint communication sent in 1908 by the Ministers of The Netherlands, Great Britain and the United States to the Chinese authorities it was declared:

That the foreign powers, in negotiating the treaties, intended that a fairly liberal area should be comprised by the term "treaty port" or "port open to foreign trade" is evidenced by the use of the terms "cities and towns" in the English text of the British treaties and "ports et villes" in the French treaties; also by the

[15] *Op. cit.*, p. 97.

rules regarding the issue of passports for traveling in the interior, where no passport is called for within 100 li of the treaty port. . . . The position of the treaty powers in this question is well known. . . . They contend as they always have done, that the term treaty port includes the city and its approaches by land or water, and further that no matter whether a place has been opened to foreign trade under treaty or by the spontaneous act of the Chinese government the same principle must apply for the sake of uniformity.[16]

Peking Not a Treaty Port. Peking has never been made by treaty or spontaneous act of the Chinese Government an Open Port. However, without formal legal basis, but with the acquiescence of the Chinese a number of stores are operated by foreigners in the capital city, and other trading done. The status of foreigners and of the Legation Quarter in Peking will receive treatment in Chapter V.[17]

Tariff Rates. The tariff rate fixed at the time of the Nanking Treaty was approximately five per cent. *ad valorem* for both exports and imports. By the Tientsin Treaties of 1858 this rate was retained but converted into schedules of specific duties, and the free list somewhat lengthened.

The next tariff revision did not take place until 1902 (effective in 1903). At this time the specific duties on imports were based upon the current prices prevailing in 1897-1899 the five per cent. *ad valorem* ratio being still retained.[18]

[16] *U. S. For Rels.*, 1908, p. 145.

[17] See *post*, p. 219.

[18] Article VI of the Final Boxer Protocol of 1901 provided:

"The raising of the present tariff on imports to five per cent. effective [i. e., as determined by market prices] is agreed to on the conditions men-

It was not long before this revision of 1902 again became unjust to China because of the continued rise of prices, the result being that during recent years the nominal five per cent. which China was permitted by the Powers to levy, amounted to scarcely more than three per cent., as tested by the market value of the commodities exported and imported. China in vain attempted to have this injustice corrected, but in 1917, after her entrance into the Great War upon the side of the Allies, she was able to obtain, among other concessions, the promise that her tariff should be raised to an effective five per cent.

As a result of the undertaking thus entered into there was convened at Shanghai, early in January, 1918, a Tariff Revision Commission composed of representatives from fifteen of the Treaty Powers. The Commission found great difficulty in agreeing upon a basis upon which to estimate the market values of commodities as it was felt that the then prevailing market prices, owing to

tioned below. It shall be put in force two months after the signing of the present protocol, and no exceptions shall be made except for merchandise shipped not more than ten days after the said signing.

"All duties levied on imports *ad valorem* shall be converted as far as possible and as soon as may be into specific duties. This conversion shall be made in the following manner: The average value of merchandise at the time of their landing during the three years of 1897, 1898, and 1899, that is to say, the market price less the amount of import duties and incidental expenses shall be taken as the basis for the valuation of merchandise. Pending the result of the work of revision duties shall be levied *ad valorem*." MacMurray, No. 1901/3.

It may be observed that this revision was dictated not so much by a desire upon the part of the Powers to do justice to China as it was to obtain a better security for the payment of the Boxer Indemnities.

It should also be noted that the revision of 1902 applied only to imports and not to exports, and that the duties upon most articles were made specific, the *ad valorem* tax being retained only for the less important commodities.

the war, were abnormally inflated. It was finally agreed that the average prices prevailing at Shanghai during the years from 1912 to 1916 inclusive should be accepted. It was also agreed that the rates thus adopted should remain for a period of at least two years after the end of the war, and that then another revision should be made. Estimated by the prevailing prices in 1918 the new tariff, which became effective, August, 1919, does not give to China much more than a four per cent. effective tariff. The valuations for determining export duties still remain those fixed by the Tientsin Treaties of 1858.

Free List for Importations. To the treaties of commerce with China are appended schedules which attempt to enumerate all the articles or classes of articles likely to be imported into China together with the valuations to be placed upon them. Articles unenumerated pay an ad valorem duty of 5 per cent. upon the market value of the goods in local currency.

Foreign rice, cereals and flour, gold and silver, both bullion and coin, are declared not liable to duty. Further articles were enumerated as duty free in the Rules attached to the treaties, but, by an exchange of notes, these further articles were taken from the list, as necessarily non-dutiable, and the understanding declared that, as to them, the Inspector-General of the Imperial Maritime Customs might deal at discretion according to the instructions issued by him subsequent to the signing of the Final Protocol of September 7, 1901, which concluded the Boxer Troubles.[13]

[13] MacMurray, No. 1903/5.

Prohibited Imports of Arms and Ammunition and of Salt. By Rules appended to the Customs Tariff Schedules annexed to the various treaties it is provided as follows:

"Except at the requisition of the Chinese Government, or for sale to Chinese duly authorized to purchase them, import trade is prohibited on all Arms, Ammunition, and Munitions of War of every description. No permit to land them will be issued until the Customs have proof that the necessary authority has been given to the importer. Infraction of this rule will be punishable by confiscation of all the goods concerned. The import of Salt is absolutely prohibited."[20]

Likin and Other Transit Taxes upon Exports and Imports. At the time the Nanking Treaty was entered into with its provisions regarding the fixed dues that might be levied upon exports and imports, it was undoubtedly the idea of the foreigner that the goods thus entering into foreign trade should be exempted from all other taxes levied by or with the acquiescence of the Government at Peking. This, however, was not the understanding of the Chinese, or, if it was, it was one soon departed from by them. As a result of this conflict of interpretation there has been a controversy which has now lasted three-quarters of a century, between the Chinese authorities and the Treaty Powers—the Chinese seeking to justify the imposition of all sorts of taxes upon goods on their way to the Treaty Ports for expor-

[20] This last is because the production of salt in China is strictly regulated, and the taxes upon its sale constitute one of the most important of the sources of revenue of the Central Government.

tation, and upon imported goods after they have entered China.

The most important of these additional charges has been the transit tax known as "Likin." Morse gives the following account of the origin and character of this tax upon commodities carried from one place to another in China:

The exigencies of the government during the Taiping rebellion drove the authorities to devise new forms of taxation, and likin ("contribution of a thousandth") was instituted. It was first heard of in 1853; and about 1861 when the active suppression of the rebellion called for largely increased expenditure, it was applied generally to all the provinces then under the control of the Imperial authorities. The original theory of the levy, one-tenth of one per cent. on the value, imposed no great burden on trade, a tax of the same amount levied as wharfage dues for the maintenance of the foreign municipalities at Shanghai, Tientsin, Hankow, and elsewhere, being scarcely felt; but practice soon parted company with the theory, and the official rates were much increased. Nor is the tax uniform in its incidence in all the provinces. Hunan is proud of its independence and freedom from non-customary exactions, and in this province the payment once of the full tariff rate of likin exempts goods from further payment within the provincial limits, while the accretions and irregular exactions are less than elsewhere in China; Hunan is, however, exceptional. Kwangtung is more nearly typical of the Empire; here between Canton and Wuchow, a distance of about two hundred miles on the West River, there are six likin "barriers," each constituting a barrier to the free movement of traffic, and each involving delay, vexation, and payment. Along the Grand Canal between Hangchow and Chinkiang, likin stations, alternately collecting and preventive, are established at distances averaging ten miles one from the other; and in that part of Kiangsu lying south of the Yangtze there are over 250 stations, collecting or preventive. . . . To get at the amount paid by the people is more difficult in the case of likin than of other taxes. The land tax and the grain tribute are assessed according to registers

very strictly kept, and both are under the control of the Hsien (District Magistrate), the "Father and Mother of the People," and yet, as we have seen, the regular legal accretion is, at the very lowest estimate, from 100 per cent. up to almost anything in reason. The Salt Administration is an old-established organization; and yet the actual receipts are threefold the reported collection, while the people pay fivefold that amount.[21] Likin is a new levy with its own administration independent of all other taxing agencies, and the collection is much more in the hands of the officer in charge of each barrier and his subordinates than is possible with other taxes.[22]

A Chinese scholar, Dr. Chin Chu, speaking of Likin, says:

Likin stations exist at all large towns and along the main routes of trade—both by land and by river. The rate of likin is not uniform in the country. But, as a rule, the tax collected is three per cent. at the station of departure and two per cent. at each inspection station. The amount collected within a province, however, does not perhaps exceed ten per cent., but when goods are transported through several provinces it may amount to fifteen or twenty per cent." [23]

Discussing the evils of this tax, Dr. Chin Chu says:

In the first place, it has no definite rule and is subject to arbitrary arrangements of the officials in charge. Secondly, it is generally collected in transit instead of at the place of consumption, thus constituting an effective bar to trade. Thirdly, it taxes, in large part, daily necessaries and inflicts a heavy burden on the poor. Fourthly, the cost of collection is extremely high, and finally, it is honeycombed with corruption on account of the officials in charge being underpaid.

[21] This statement was made by Mr. Morse before the placing of the collection of the salt tax under the administrative direction and control of a foreigner—Sir Richard Dane.

[22] *Trade and Administration in China*, p. 103.

[23] *The Tariff Problem in China*, p. 103.

Describing the manner in which Likin is levied and collected, Mr. Gerald King, in a recent number of the *Far Eastern Review*,[24] says:

It is not any fixed amount; it is what the merchant will stand. First there is the likin itself, a different rate at every station, for there is no likin tariff. Then there is the dispute as to fare. Then there is the fee for examination. Then the bribe for non-examination. Then there is the contribution to the repair of a neighboring temple. And so on to the end of the merchant's patience. The ordinary merchant would not, of course, trouble his head with how the bill was made up. He would immediately bargain with the likin people for a fixed sum to cover all his goods. These detailed charges are only to give an air of verisimilitude to an otherwise bold and unconvincing statement.

Likin is not of much direct benefit to the Government. It is usually farmed out and the farmer makes as much as he can. If it is not, it makes little difference whether the money is taken by the farmer or by the government's own servant, for the latter simply omits or reduces the entries in his books to cover what he pockets. Then the merchant connives at a fraud? Of course, he must. He can never expose it, for even if there were an honest Governor, and he could get access to him without the matter being suppressed or delayed on the way, the man who would replace the man dismissed would be t'other instead of which.

It is to be understood that this vexatious and oppressive charge upon goods in transit in China is one that is levied upon all goods and is not one made especially applicable to goods imported from abroad or upon those intended for exportation. But that foreign traders should have sought to escape from its burdens has been but natural. In general the compromise has been accepted and embodied in treaties between China and the Treaty Powers, that upon the payment of a reason-

[24] February, 1919, p. 70, "China's Taxation of Imports and Exports."

able fixed sum, foreign goods shall be secure from all other transit charges.

By the Treaty of Nanking it was provided that merchandise upon which the maritime duties had been paid might "be conveyed by Chinese merchants to any province or city in the interior of the Empire of China, on paying a further amount as transit duties," this amount being fixed by an agreement of the next year at a rate not to exceed the then rates which were declared to be moderate.[25]

By the time of the Treaty of Tientsin (1858), likin had already begun to make its appearance, and it was evident that some better arrangement than that of the Nanking agreement would have to be arrived at. It was, therefore, provided by Rule 7 appended to the Tientsin Treaty that, in addition to the maritime duty, a fixed sum might be paid at the port or at the first likin station, whereupon a certificate should be given which could be presented at all other likin stations and exemption from further transit duties thus obtained. This rule was made applicable to native products intended for export as well as to foreign commodities imported and carried to the interior.

The amount of transit duty thus agreed upon was fixed at one-half of the export or import duty. If the goods were duty free the transit charge was to be two and one-half per cent. *ad valorem.*

This arrangement, simple and satisfactory as it

[25] This, of course, was before the development of the likin system, the charges referred to being what were known as Lo-ti-shui, or Lo-ti-chuan, which were destination or consumption and production, as well as transit, taxes.

appeared to be, did not, however, put an end to friction between foreign traders and the Chinese authorities. In the first place, in the administration of the transit pass system there was an opportunity for hindrance and exactions upon the part of the Chinese officials which it has been found practically impossible to remove. In the second place, the Chinese have found it possible to levy charges which, though not nominally transit dues, have nevertheless had substantially the same incidence. Upon the first point we may again quote the words of Mr. King:[26]

The transit pass is, of course, a great deal better than nothing. The main difficulties are, that in order to see that the goods being conveyed are those covered by the pass, the authorities at the various barriers must have the right of examination. This is just, as, did they not, the dishonest merchant would be able to profit by it. But the power of examination gives them the chance of making additional squeezes, for they can always demand a *pour boire* for not examining: threatening to examine if it is refused, and so causing a delay of three or four days at each of the barriers to be passed. These difficulties will only cease with the total abolition of the barriers. . . .

. . . If the merchant elects to move his goods without a Transit Pass, he must make his own arrangements with the authorities. This is usually done by large Chinese firms on the basis of a fixed monthly payment, or fixed sum for each movement of goods. The government is doubly defrauded by this system, since the merchant pays on less goods than he moves, and the official reports less duty than the merchant paid. . . .

. . . It sometimes happens that likin officials will compete with the Transit Pass system, by offering a rate which is just cheaper than the cost of the pass, and of course arranging to the merchant's

[26] *Far Eastern Review*, February, 1919. "China's Taxation of Imports and Exports."

satisfaction that there will be no delays, disputes, or attempts to avoid the bargain. This can only be done where the goods have not far to go, or they would pass other barriers than those under the control of the man with whom the original bargain was made.

As regards the defect of the transit pass system that it does not prevent the Chinese from imposing other charges which, though not nominally transit dues, nevertheless impose a serious burden upon foreign export and import trade, we may quote the statement of Dr. Chu. He says:

On the part of the Chinese it has been claimed that duty-paid goods are liable to likin or other taxation if in the hands of a Chinese dealer; that goods accompanied by a transit-duty certificate are free only of dues at the barriers at which transit dues are collected and that on arrival at the inland center to which the imports are to be carried, they are subject to any taxation that may be imposed upon them. In other words, the Chinese officials take the "inland charges" to mean transit dues and transit dues only.[27] British merchants, on the other hand, have maintained that by treaty the payment of the tariff duty should protect their goods from all further taxation until the passage of a barrier renders necessary either the payment of the transit dues, or the production of a customs certificate showing payment of the half-duty commutation. They further claim that the imports having paid both tariff and transit duties—7.5 per cent. in all—should thereafter be free from all taxation whatsoever.[28]

[27] In some cases the Chinese authorities, finding that transit taxes could not be collected, have imposed a so-called destination tax equal in amount to the likin and required to be paid after the transit pass is surrendered. It is to be noted that in many cases of this sort there was involved a conflict between the local and central governments in China. The former being deprived of the opportunity of collecting the likin and devoting its proceeds to local purposes have sought to recoup themselves by imposing destination or consumption taxes and thus obtaining the revenue to which they have believed themselves entitled.

[28] Chin Chu, *The Tariff Problem in China*, p. 107.

In 1876, by the Chefoo Convention, another attempt was made to place the matter upon a more satisfactory basis, but again without success.

In 1896, by the Sino-Japanese Treaty, the problem was dealt with in the following language—the rights granted to the Japanese becoming, of course, immediately available to the nationals of the other Treaty Powers.[29]

ARTICLE X. All articles duly imported into China by Japanese subjects or from Japan shall, while being transported, subject to the existing regulations, from one open port to another, be wholly exempt from all taxes, imposts, duties, likin, charges and exactions of every nature and kind whatsoever irrespective of the nationality of the owner or possessor of the articles, or the nationality of the conveyance or vessel in which transportation is made.

ARTICLE XI. It shall be the option of any Japanese subject desiring to convey duly imported articles to an inland market to clear his goods of all transit duties by payment of a commutation transit tax or duty, equal to one-half of the import duty in respect of dutiable articles, and two and one-half per cent. upon all the value in respect of duty free articles; and on payment thereof a certificate shall be issued, which shall exempt the goods from all further inland charges whatsoever. It is understood that this Article does not apply to imported opium.

ARTICLE XII. All Chinese goods and produce purchased by Japanese subjects in China, elsewhere than at an Open Port thereof and intended for export abroad, shall in every port of China be freed from all taxes, imposts, duties, likin, charges and exactions of every nature and kind whatsoever, saving only export duties when exported, upon the payment of a commutation transit tax or duty calculated at the rate mentioned in the last preceding Article, substituting export duty for import duty, provided such goods and produce are actually exported to a foreign country within the period of twelve months from the date of the payment of the

[29] MacMurray, No. 1896/4.

transit tax; all Chinese goods and produce purchased by Japanese subjects at the open ports of China and of which export to foreign countries is not prohibited, shall be exempt from all internal taxes, imposts, duties, likin, charges, and exactions of every nature and kind whatsoever, saving only export duties upon exportations; and all articles purchased by Japanese subjects in any part of China, may also, for the purpose of export abroad, be transported from open port to open port, subject to the existing Rules and Regulations.

Article XIII makes provision regarding the re-exportation of foreign goods imported into China.[30]

It might seem to one unacquainted with conditions in China and with the attitude of the Chinese authorities towards the whole question, that language as comprehensive and as explicit as that which has just been quoted, would have freed exports and imports from all burdens except those expressly provided for. As a matter of fact, disputes have continued to the present time, due to the fact that the Chinese have attempted to do by indirection what they are not permitted to do directly. Further transit dues, *eo nomine,* are no longer imposed upon goods which have once commuted for them, but there exist a variety of charges in the nature of consumption taxes, licenses, etc., the incidence of which is finally upon the goods imported or to be exported. This is the

[30] Article XL of the French treaty of Tientsin, 1858, contains the following provision which, upon its face, would seem to give to foreign goods greater protection against taxation by the Chinese, than is afforded by any other treaty provision. It reads: "It is understood that any obligation not admitted expressly in the present convention shall not be imposed upon [French] consuls or consular agents nor upon their nationals." This provision, however, is not now appealed to by the Powers, that is, since the commercial treaties of 1902 and 1903 which are regarded as defining the extent of China's undertakings with regard to foreign commerce.

complaint of the foreign traders. Upon the part of the Chinese authorities the claim is that the transit pass system is greatly abused: that foreigners sell their names to dishonest Chinese so that transit passes are obtained to cover goods in which the foreigners have no interest whatever. Thus, it is asserted, not only is the revenue defrauded, but honest Chinese merchants placed at a disadvantage in the markets.

It may further be observed that the Chinese have contended and acted upon the contention that they have the right to exact Likin charges, or their equivalent, in the form of transit passes, upon imports as soon as they pass outside the restricted areas within the treaty ports set apart for foreign residence and trade. This construction of their treaty rights the Powers have resisted so far as they have been able.

Destination and Consumption Taxes. The Chinese have contended that the transit pass exempts goods only from Likin charges to the point of destination, and that once that point is reached, the goods lose all their foreign character, and that, therefore, any further transshipment is not governed by treaty exemptions from taxation.

Also the Chinese have levied taxes termed "Boat Taxes," which have really amounted to, and been intended to amount to a charge on the goods carried in the boat to or from the ports for export or import. These taxes the Treaty Powers have strenuously, though not always successfully, resisted.

Especially, however, has controversy raged with reference to certain consumption or destination taxes termed Lo-ti-chuan or Lo-ti-shui, which the Chinese in several

provinces have sought to impose on foreign imports. In Chekiang, Anhui, and Kiangsu these charges were levied specifically upon foreign goods brought into the interior, and their amounts were determined upon the basis of the Likin which had been commuted for by the purchase of transit passes. To this the Powers have objected. For example, writing with reference to this matter to its Consul-General at Shanghai (March 22, 1915) the American Legation at Peking declared that the taxes were opposed to treaty provisions because they established a form of taxation which was special in its application to foreign goods covered by transit passes, thus discriminating against such goods; and second, because they, in effect, amounted to taxes which were expressly to be foregone in return for the payment of the transit tax.

In a communication from the American Legation to the Chinese Government, dated July 15, 1915, it was declared:

> The American Government has never recognized the propriety of levying a destination tax upon goods which have paid the import duty and the transit pass duty entitling them under the treaties to exemption from "all further charges whatsoever." The levy of such a destination tax could be justified, if at all, only on the theory that transit-pass goods, having completed their transit under protection of the treaties, are thereby merged into the trade of the country so as to be indistinguishable from native goods. It is not consistent with that theory, that a destination tax should be made particularly applicable specifically to foreign goods.

Chinese Stamp Tax on Bills of Lading, Etc. In October, 1913, the Chinese Government levied a stamp tax, becoming effective March 1, 1914, on bills of lading,

shipping companies' receipts, consignees' receipts and other documents relating to exports and imports. The question having been raised whether the charges thus authorized did not operate as a tax on the exports or imports covered by these documents, and therefore in violation of China's treaties with the Powers, the American Government indicated the view that this construction need not necessarily be attached to the tax; that, in other words, this new charge did not violate the treaty provision that goods should be exempt from all further inland charges whatsoever, or the provision that exports having paid transit tax should be exempt from all internal taxes, import duties, likin, charges and exaction of every nature and kind whatsoever saving only export duties. However, under date of February 28, 1914, the representatives of the other Treaty Powers at Peking sent to the Chinese Government a Diplomatic Note in which it was declared that the Powers could not give their assent to the application of the stamp tax to their nationals. The United States argues that these taxes are admissible since the limitations upon China's taxing powers, under the treaties, are specific and not general or absolute. However, as long as the other Powers decline to submit to these taxes, the United States cannot well insist that its own nationals should pay them. The Chinese Government nevertheless continues to insist upon its right to levy the tax and, in fact, in many cases, it is collected.

Mackay Treaty with Great Britain, 1902. With reference to foreign trade and its hindrances by the imposition of Likin and other inland charges upon articles imported

from abroad and upon domestic goods intended for export, Article VIII of the Sino-British Mackay Treaty of 1902 is of especial interest. This Article presented a plan which was substantially accepted in the Japanese and American treaties of 1903 whereby in exchange for the right to increase her import duties to a total of 12½ per cent. *ad valorem* and her export duties to 7½ per cent. China was wholly to abandon likin charges upon articles of import or export. It was, however, expressly provided that, before becoming effective, this arrangement should receive the approval of all the other powers who might be entitled to most favored nation treatment —an approval which has never been given except by Japan and the United States.[31]

The Preamble of Article VIII of the Mackay Treaty reads as follows:

> The Chinese Government, recognizing that the system of levying likin and other dues on goods at the place of production, in transit, and at destination, impedes the free circulation of commodities and injures the interests of trade, hereby undertake to discard completely those means of raising revenue with the limitation mentioned in Section 8 [*i. e.*, on goods not imported or intended for foreign export].
>
> The British Government, in return, consent to allow a surtax, in excess of the tariff rates for the time being in force to be imposed on foreign goods imported by British subjects, and a surtax in addition to the export duty on Chinese produce destined for export abroad or coastwise.
>
> It is clearly understood that, after likin barriers and other stations for taxing goods in transit have been removed, no attempt shall be made to revive them in any form or under any pretext whatsoever; that in no case shall the surtax on foreign imports

[31] This approval, subject to the same proviso, was given by Japan and the United States in their treaties of 1903.

exceed the equivalent of one and a half times the import duty leviable in terms of the Final Protocol signed by China and the Powers on the 7th day of September, 1900;[32] that payment of the import duty and surtax shall secure for foreign imports, whether in the hands of the Chinese or non-Chinese subjects, in original packages or otherwise, complete immunity from all other taxation, examination, or delay; that the total amount of taxation leviable on native produce for export abroad shall, under no circumstances, exceed 7½ per cent. *ad valorem*.

Conclusion. Without going further into historical or descriptive detail of the rights enjoyed by foreign traders in China, we may conclude this section with two quotations from two standard treatises which set forth in general terms the present situation.

Dr. Chin Chu, in his recently published monograph, "*The Tariff Problem in China*,"[33] summarizes these rights as follows:

They may import foreign goods into, and export native products from, China through each one of the open ports, on payment of a tariff duty amounting to what was five per cent. on the average values of 1897-8-9, in the case of imports, and on the values of 1860, in the case of exports. The foreigner again may take foreign goods to, and bring native products from any inland place, on payment of an additional half tariff duty, in the shape of transit dues. They may also convey Chinese produce from port to port, paying the full export duty on shipment and a half duty on landing. At the treaty ports where they reside, they are free from all taxation, and before 1903 they were even allowed to bring in whatever was required for their personal and household use, duty-free.

What is most important to them is the fact that since the

[32] That is, a surtax of one and a half times the 5 per cent. allowed by the final Protocol of 1901 would permit the total import tax to be 12½ per cent. *ad valorem*. MacMurray, No. 1901/3.

[33] *Op. cit.*, p. 16.

Shimonoseki treaty in 1895 they have been given the right of manufacturing any kind of goods in the treaty ports, subject only to the same conditions as the producers of native manufactured goods in China. Everywhere they are withdrawn from Chinese control, and are placed under their own consuls. But their merchandise can be moved only in accordance with Chinese customs regulations, and ships must anchor in accordance with harbor rules and directions of the Chinese harbor master.

Mr. Morse writes as follows:

He (the merchant) is privileged to rent or build his own premises, subject only to the condition that they shall be at one of the treaty ports . . . usually within a circumscribed area at those ports. . . .

The tax (on his goods) is strictly limited to the rates, based on a uniform five per cent. levy, specified in a revenue (non-protective) tariff, which forms an integral part of the treaty under which he lives and trades. From the inland taxation, too, which presses so heavily on Chinese traders who are subject to the levy of likin, his goods are exempted by payment of "transit dues," not exceeding a nominal two and one-half per cent. *ad valorem*.

No Chinese authority has a right to claim any municipal taxes from foreign premises; and within the "areas reserved for foreign residence and trade," all taxes levied are solely for the benefit of such reserved area. The foreign resident is equally free from the incidence of benevolence, or from the necessity of contributing to public charities and patriotic funds, or from inducement to buy official honours and titles, to all of which the Chinese merchant is liable.

No capitation tax may be imposed, or right of deportation exercised on foreigners by the Chinese officials, as was the case in the old days.

No foreign merchant is now liable for any but his own criminal offenses, and for those with which he may be charged he is judged according to the provisions of his own laws.

In civil cases he is held accountable for the requirements of the commercial code of his own country; and in suits against Chinese

he is aided by the advocacy of his own official representative, the Consul.

Finally, in at least ten of the Treaty Ports, the foreign merchants collectively are privileged to form their own municipal government, subject only to the oversight of the Consuls, to tax themselves and administer the proceeds of the taxes, to construct their own roads, and to control their own measures of police and sanitation.

Others could be added, but these constitute a formidable list of exceptional privileges, enjoyed by the foreigner and denied to the Chinese.[34]

Maritime Customs Administration.[35] The term "Maritime Customs" has come into official and general use to distinguish the customs levied on foreign exports and imports from the native customs levied on purely domestic trade. As will presently be seen, however, to a certain extent these native customs are now administered in connection with the maritime or foreign customs.

It has already been pointed out that in 1842 by the Treaty of Nanking the duties leviable upon foreign exports and imports were placed upon a fairly definite basis. The levying and collection of these duties, thus agreed upon remained, of course, in the hands of the Chinese local officials.[36] Owing, however, to the incompetency and still more to the venality of these officials many evils arose. Smuggling was carried on in a whole-

[34] *Trade and Administration of China*, p. 190.

[35] This description of the maritime customs is based upon the accounts given by Morse in his *Trade and Administration of China*, by Chin Chu in his *Tariff Problem in China*, and by Mr. Gerald King in his excellent article in the *Far Eastern Review*, for February, 1919, pp. 67 *et seq.*

[36] By the Nanking Treaty of 1842 Great Britain exacted of China an indemnity of Tls. 21,000,000 the payment of which was to be secured by the customs. To see that this agreement was carried out the British Government at the five ports opened by the treaty appointed officials to collect the duties paid by British merchants and this practice was soon followed by other governments. This practice was, however, soon abandoned.

sale manner, and corrupt bargains between the Chinese officials and merchants as to the amounts of duties to be paid became common. Finally, in 1853, the whole system of collection at Shanghai broke down when the Taiping rebels occupied the city.

In the absence of customs officials, thus brought about, the foreign merchants agreed among themselves to declare their goods before their respective consuls and to pay to them, or to give bond for their payment, the five per cent. duties,—the amounts thus paid to be accounted for to the Chinese government.

This plan, however, did not work very satisfactorily, throwing as it did a very considerable amount of extra work upon the consuls, and the result was that in 1854 an agreement was entered into between the local official, the "Taotai" of Shanghai, and the British, French and American consuls, according to which the whole matter of administering the maritime customs at Shanghai was to be handled by three foreigners, to be appointed by the Taotai and to be termed Inspectors of Customs.

The first appointees under this arrangement were Captain Thomas Wade (British), Mr. L. Carr (American), and Mr. Arthur Smith (French). After a year Mr. Wade resigned and was succeeded by Mr. H. N. Lay who, in 1859, received the title Inspector General and was also given by the Chinese Government supervision over the system of lights and buoys.[37]

[37] By the tenth "Rule of Trade," it was agreed that a British subject should receive this appointment as Inspector-General. Mr. Lay continued to be a member of the British Consular Service. These Rules of Trade were drawn up by the Tariff Commission, authorized by the Tientsin Treaty of 1858. Rule 10 read as follows:

"It being by Treaty, at the option of the Chinese Government to adopt what means appear to be best suited to protect its revenues, accruing on

In 1863 Mr. Lay quarreled with the Chinese Government about a matter not connected with the customs, and was dismissed by that government and Mr. Robert Hart appointed in his place—a position which he held until 1908.[38] Since then Mr. F. A. Aglen has been the Inspector General. Replying to a letter from the British Minister, the Chinese Foreign Office in May, 1908, gave assurance that as long as British trade should predominate in China a British subject would be appointed to the Inspectorate General.

For the purpose of this volume it will not be necessary to trace the development of the administrative system which Sir [39] Robert Hart built up. A description of its present organization and mode of operation will be sufficient.

This system now applies to the collection of duties on foreign goods, exported and imported, at all the Treaty Ports of China, and also, as will later be shown, embraces the control of some of the "native customs." For a time also, 1896 to 1911, the Chinese Post Office was within its jurisdiction.

British trade, it is agreed that one uniform system shall be enforced at every port."

"The High Officer appointed by the Chinese Government to superintend foreign trade will accordingly from time to time, either himself visit, or will send a deputy to visit, the different ports. The said High Officer will be at liberty, of his own choice, and independently of the suggestion or nomination of any British authority, to select any British subject he may see fit to aid him in the administration of the customs revenue; in the prevention of smuggling; in the definition of port boundaries; or in discharging the duties of harbor master; also in the distribution of lights, buoys, beacons, and the like, the maintenance of which shall be provided for out of the tonnage dues."

[38] Mr. Hart had been actually in charge since 1861, Mr. Lay having returned to England on sick leave.

[39] He was knighted in 1882 by the British Government; and later made a Baronet. Sir Robert died in England in 1911.

The essential fact is to be born in mind that, though under the control of a foreigner with almost autocratic administrative powers, the maritime customs service remains a branch of the Chinese Government. That government has never attempted to interfere with appointments in the service, nor to dictate its administrative policies. But, in form, the orders issued by the Inspector General are in conformity with commands of the Chinese Government, and all receipts normally go immediately into the custody of banks designated for the purpose by the Chinese Government, and do not pass through the hands of the Inspector General or even of the Commissioners in charge of the customs houses at the several Treaty Ports. These commissioners simply receive the certificates that the proper amounts have been paid by the importer or exporter into the banks designated for their receipt. The sums thus received constitute a fund pledged for the payment of certain of China's foreign debts and therefore, not until these obligations have been met can the customs receipts be drawn upon by the Chinese Government.

Because of the disorder attendant upon the Revolution of 1911, the customs receipts, for greater safety, were deposited in foreign banks and could not be drawn upon except under the signature of the Inspector General or his representative. In 1914, however, an arrangement was entered into with the Chinese Government according to which customs receipts should be deposited in one of the branches of the Bank of China, which is substantially a Chinese government institution.[40]

[40] For an excellent description of the manner in which customs receipts were handled and foreign commitments met during the revolutionary years

Present Customs Administration. For a description of the present organization of the system we cannot do better than quote Mr. King's recent article in the *Far Eastern Review.*

The Inspector General is the representative of the Chinese Government, who employs the remainder of the service. His will is law, and from his decisions there is no appeal. His staff is divided into three branches, the Revenue Department, the Marine Department, and the Works Department.[41] The first is the only one dealing with customs matters: the two latter exist owing to the peculiar conditions under which the first functions.

The Revenue Department employs about one thousand foreigners, including Japanese, and nearly five thousand Chinese.

The Marine Department consists of about one hundred foreigners and twelve hundred Chinese, and the Works Department of fourteen foreigners and fifteen Chinese.

The foreigners serving the Revenue Department are divided into two classes, the Indoor and Outdoor Staffs. The Indoor Staff may be said to be the administrative and bookkeeping side, while the Outdoor Staff do the examination work. Commissioners, Deputy Commissioners, and Assistants make up the Foreign Indoor Staff, and various grades of tide surveyors, appraisers, examiners, and tide waiters, the Foreign Outdoor Staff. This staff is recruited from all the nations having treaty relations with China, the repre-

1911-1914 see the memorandum of F. A. Aglen published by Morse in vol. III of his *International Relations of the Chinese Empire*, p. 401.

[41] There was for a time an Educational Department which in 1902 was merged in the Peking Government University. It had, however, only a slight connection with the Service. "It was supplied with funds through the Customs, and the Inspector General nominated to vacant chairs in Peking College, and frequently 'lent' men from the Customs for temporary instructing duty; but the College was built up and directed for many years by the venerable Dr. A. P. Martin, educator and sinologue. The College at Canton, which still survives, is small, and is under the direct control of the Commissioner, as quasi colleague of the Tartar General, appointments to its staff being made by the Inspector General." Morse, *Trade and Administration of China*, p. 384.

sentation being roughly equivalent to the trade interests involved. Some important countries with small trades have insisted on a somewhat larger representation than their trade requires.

The Indoor Staff is, for European nations, recruited either through the customs office in London or by direct nomination, while the Outdoor Staff is taken on locally. It is impossible with so many nationalities that there should be any fixed standard of qualifications. The question of promotion and selection for commissionerships are dealt with solely by the Inspector General.[42] He decides the staffing of the ports, an important matter to members of a service operating over so many degrees of latitude, where the northern ports are generally considered superior climatically to the southern. Service in some of the Treaty Ports which have proved trade failures, but which must be kept open, means exile from European society and the conveniences of life for a number of years.

. . . The Chinese staff of the Revenue Department is recruited by competitive examination and is liable to serve in any port in China. All these Chinese are required to speak English.

Little provision is made for retiring. The better paid indoor men receive an extra year's pay every seven years, which is called a Retiring Allowance, and is intended to be put aside as provision for that eventuality; the less well paid Outdoor Staff men only receive a year's pay every ten years, and the Chinese staff only get theirs every twelve years. Leave is granted to the Indoor Staff after the first six years of service for one year on full pay, or two years, the second without pay, and after that every five years on the same terms, while the Outdoor Staff have to serve for ten years before they are given a six months' leave. No passages are paid home, but half the return passage is paid for the man and his family.

Two characteristics of the administration of the Mari-

[42] At each Treaty Port there is a commissioner in charge of the customs house. He is assisted by a deputy commissioner and four grades of assistants—all appointed by the Inspector-General, the appointments being reported to the Chinese authorities.

time Customs deserve especial mention—the one for approval and the other for disapproval.

The absolute powers of appointment and dismissal possessed by the Inspector General make the system a highly integrated and centralized one. This feature is an excellent one since it makes for efficiency. But not commendable is the exclusion of Chinese from all the higher branches of the system. It is true that more Chinese than foreigners are employed, but only since 1907 did it become possible for a Chinese to hold even a full assistantship. This discrimination against the Chinese was undoubtedly necessary during the early years after the service was taken over by Sir Robert Hart, but it would seem that he might have made much greater effort than he did to develop a staff of Chinese employees qualified for the higher positions in the service which, after all, is not a foreign one, but a branch of their own government.

Tsingtao: Customs Service at: A few special words need to be said with regard to the customs situation at Tsingtao. The Treaty of March 6, 1898 by which China leased to Germany the Kiao-Chow territory provided that the matter of customs should be determined by agreements later to be entered into. In pursuance of this understanding, an agreement was signed at Peking on April 17, 1899,[43] between the German Minister to China and Sir Robert Hart according to which the commissioner of the Maritime Customs at Tsingtao was to be of German nationality and his appointment to be in accordance with an understanding with the German Legation at Peking.

[43] MacMurray, No. 1899/2.

The members of the European staff of the maritime customs at Tsingtao were also to be of German nationality. On merchandise brought by sea no import duty was to be levied, but an import duty according to existing treaties was to be collected on all goods passing the frontier of the leased territory into the interior of China. Similarly, Chinese produce brought into the territory for export abroad was to pay the export duties according to existing treaties. The maritime customs office at Tsingtao was to take no part in the collection or administration of tonnage dues, lighthouse dues or port dues. Special regulations for the control of the importation and sale of opium, arms and explosives were also adopted.

By another agreement between Sir Robert Hart and the German Minister, dated December 1, 1905, it was provided that:

> After the delimitation of the Tsingtau free area by the German officials, the Chinese Maritime Customs established in the German territory will levy all the duties on goods passing outside the free area, and the Chinese Government will hand over annually to the German officials at Tsingtau twenty per cent. of the net import duties collected, as shown by the statistics of the Kiao-Chow customs, as its contribution to the expenses of the territory. This percentage will be fixed for the present provisionally for five years and payment will be made in quarterly instalments after the end of each quarter. If this arrangement, fixing the contribution at twenty per cent. should at any time seem to either party to require amendment, notice is to be given to the other before the beginning of the fifth year in order to afford time for reconsideration.[44]

This agreement also provided that the following goods should be admitted duty free:

[44] MacMurray, 1899/2. Up to the present time (1920) no change in the percentage has been made.

(*a*) Articles for arming and outfitting the troops, including uniforms, if directly ordered by the military or naval authorities and if accompanied by certificate of the colonial government.

(*b*) Stores and provisions ordered by the military or naval authorities in anticipation of future requirements, if accompanied by certificate of the colonial government.

(*c*) Machinery, plant, as well as parts of machinery, implements and tools required for manufacturing, industrial, and agricultural purposes; also all building materials, fittings, and other articles for public and official works. . . .

(*d*) Articles (vehicles and such like) passing to and fro between the free area and outside, solely for ordinary repairs; but they are to be reported to the customs officers, that their passing may be noted.

(*e*) All postal parcels imported and destined for private use in German territory, if the duty which has to be taxed in accordance with the attached declaration does not exceed $1 (value $20). The customs are at liberty to examine such parcels and verify declarations as occasion demands.

(*f*) The personal luggage of passengers, declared as not containing dutiable or contraband goods: it will only be examined in cases where the customs consider it especially necessary.

This free list is given because, since the occupation of Kiaochow by the Japanese, there has been considerable complaint that the privileges of free entry have been greatly abused. Especially does this appear to have been so with reference to the introduction of opium and arms into China.

In connection with the situation in Shantung since the taking over of the German leased territory and sphere of interest by the Japanese, something will be said regarding the customs situation at Tsingtao since that time. Here it is sufficient to say that, aside from certain violations of agreements and treaties by the Japanese, the chief controversy has been as to the control that the

maritime customs service of China should have over the appointments of the customs officials within the area occupied by the Japanese. As early as December, 1914, the Japanese insisted that they should control these appointments, appointing whom they might see fit and without regard to whether the one appointed had or had not previously been in the maritime customs service.

This contention was met by diplomatic pressure exerted by the other powers, especially by Great Britain, and, as a result, an agreement was reached, August 6, 1915, under which Japanese were to be appointed to the places previously held by German nationals, and the customs and duties collected by the Japanese since occupation (less twenty per cent.) were to be surrendered, as the Germans had done, to the Maritime Customs Service.[45]

Dairen, Customs Administration of. By an agreement entered into between the Governments of China and

[45] See post, p. 235. Regarding the demands at first put forward by Japan, Hornbeck makes the following comment: "The Japanese contended that the only satisfactory solution would be for the Japanese Government to appoint a Japanese commissioner and a full Japanese staff. To understand the significance of this it must be remembered that the Chinese customs revenue is hypothecated to the service of the Boxer indemnity which is a debt due to the Powers; that Kiaochow, though in German occupation, has been Chinese territory; that the customs revenue from there went—after deducting twenty per cent. for local purposes—into the Chinese treasury; that the Chinese Customs service is internationally recruited; and that positions in the customs service have been held by a regular process of entrance and promotion. Hence the Japanese demands meant either the establishing of a separate Japanese Customs regime on Chinese soil, with the subtraction of the Tsingtao revenues from the Chinese revenues—thus involving an invasion of China's sovereignty and a detriment to the financial rights of the Powers; or an infraction, in favor of Japanese subjects, of the rules and system of the Chinese Customs Service, placing Japanese by appointment, and without the authority of the Inspector-General, over the heads of other foreigners who, being already in the service, had precedent rights to promotion." *Contemporary Politics in the Far East*, p. 393.

Japan in 1907 (May 30), the following regulations regarding the establishment of a maritime customs office at Dairen were adopted:[46]

The commissioner or chief of the office is to be a Japanese and for his successors the Inspector-General is to come to an understanding with the Japanese Legation at Peking. The members of the staff at Dairen are also, as a rule, to be of Japanese nationality, although, in cases of suddenly occurring vacancies or to meet temporary requirements, members of other nationalities may be provisionally appointed. The Inspector General is to inform the Governor General of the leased area when a change of the Commissioner is contemplated. All correspondence between the office and Japanese authorities or Japanese merchants is to be in the Japanese language, but merchants of other nations residing at Dairen may correspond in English or in Chinese. No import duty is to be levied on merchandise brought by sea to Dairen, but the regular duty shall be paid on all goods passing the Japanese frontier of the leased territory into the interior of China. The regular export duties are to be paid on goods from the interior brought to Dairen for export, but " produce raised in, and merchandise manufactured from produce raised in or imported by sea into, the Japanese leased territory shall pay no export duty. The duty to be paid on articles manufactured in the Japanese leased territory from materials brought there from the interior of China will be the same as at present paid by articles in similar circumstances in the German leased territory of Kiaochow." " Chinese merchandise or products brought from Chinese treaty ports to Dairen shall pay no duty as

[46] MacMurray, No. 1907/6.

long as they remain inside Japanese territory; but if these Chinese merchandise or products pass the Japanese frontier into the interior of China, they shall pay according to existing treaties." "Chinese merchandise shipped from Dairen, and having paid accordingly export duty, shall be provided with a receipt, on producing which it shall pay, on being landed at a Chinese treaty port, a coast trade duty according to existing treaties." "For Japanese and other non-Chinese merchandise, on being shipped to Dairen from a Chinese treaty port, the import duty paid at the latter port shall be refunded by drawback according to treaty stipulation. On being imported to Dairen, such merchandise shall pay no duty so long as it does not pass the Japanese frontier into the interior of China. On being re-exported from Dairen to other places outside China such merchandise shall pay no export duty." "Chinese merchandise or products having been shipped from a Chinese treaty port to Dairen and reshipped from there to places outside China shall on this occasion pay no export duty, in case that documentary evidence is produced of their having paid export duty at the treaty port from which they came."

The Customs Office at Dairen is to take no part in the collection or administration of tonnage dues, lighthouse dues, or port dues.

In general, the customs tariff in vigor in the Chinese treaty ports is to be applied by the customs office at Dairen. This office is to have exclusive charge of issuing transit passes for merchandise going into the interior of China as well as for goods from the interior to Dairen; "and this office will be charged as well with all and every

function, right, or capacity which appertain in the treaty ports to the so-called Chinese customs Taotai." For transit passes one half of the import or export dues shall be charged. " The procedure to be observed in case of frauds or contraventions committed by merchants against the Maritime Customs rules shall be settled hereafter by a separate agreement, but it is understood in principle that all judicial procedure rests with the Japanese tribunals."

At the same time that these matters were determined, another agreement relating to inland steam navigation from Dairen to inland places was entered into, the enforcement of the regulation being placed in charge of the Customs office. In general, this agreement provided that the rules and regulations of July and September 1898, and the additional rules of October, 1903, should be applied. A few special rules were also laid down. Opium and contraband goods were not to be carried inwards or outwards; the Japanese authorities at Dairen were to assist in suppressing smuggling—especially of opium—; the transmission of Chinese closed mails between Dairen and inland ports was to be free of charge.[47]

Antung and Newchwang. At Antung the Commissioner of Customs is a Japanese. At Newchwang, where the Commissioner is at present an Englishman, the Japanese have for several years sought to have one of their own nationals appointed on the ground that the trade at that port is predominantly Japanese. There is no general rule in the Maritime Customs that the nation which has

[47] For texts of these customs and inland steam navigation agreements, see MacMurray No. 1907/6; and Customs Treaties, II, pp. 740-743.

the predominant trade at a port should have there one of its nationals as the Commissioner—indeed there are good reasons why this rule should not be adopted—and the arrangements that have been made with reference to Dairen and Tsingtao cannot properly be quoted as precedents since both ports are within leased areas.

Special Arrangement Regarding Trade between Korea and Manchuria. Japan has with China a special arrangement whereby she secures a reduction in customs dues on goods imported into Manchuria from or through Korea (Chosen) and exported from Manchuria to or through Chosen, by rail *via* Antung. On dutiable goods leaving Manchuria by rail for places beyond that point, only a two-thirds customs rate is charged. The "Transit" charges on these goods are one-half of the customs charges, that is, one-half of the two-thirds normal rate. Goods from Manchuria for local consumption in Hsin Wiju or which within two years are carried by rail beyond that point pay the full rate but obtain a rebate of one-third.[48]

Russian Frontier Trade. By certain regulations attached to the St. Petersburg Treaty of 1881 between China and Russia it was provided that no duties should be levied on the frontier of the two countries within a limit of one hundred li (33 miles). This zone was abolished in 1912 to take effect on January 1, 1913. By regulations agreed upon by the two countries, under date of July 8,

[48] For the proclamation based upon this agreement, and dated May 29, 1913, see MacMurray, 1913/7.

1907, it was provided that China was to establish customs stations on the frontier, but was to collect no duties upon goods shipped by rail to stations within this former zone. Also that certain areas were to be fixed within which goods shipped by rail should be required to pay but two-thirds of the regular Chinese import duty. Thus at Harbin the two-thirds duty area was to extend to all points within a radius of ten li from the station. At other designated stations the radius was to be five li. For all its smaller stations on the Eastern Railway the radius was to be three li. Goods shipped out of these areas were to pay the full duty. It was further provided that while this was a special arrangement between China and Russia, not only Russia but all foreign merchandise shipped to China over the Chinese Eastern Railway should enjoy the same treatment.

Russia on her part agreed to a reduction of one-third on goods imported across her frontier from China.

According to Article 10 of the Regulations for trade between China and Russia by Railway promulgated September 8, 1896,[49] goods carried by rail were to pay one-third less than the regular customs dues. A little later (July 8, 1907, and May 30, 1908) it was agreed that in determining the duties to be paid at the ports of Manchuli and Suifenho there should be the same reduction.[50]

Frontier Trade with Burma and Indo-China. By Article III of the amended Trade Regulations for Trade between China and France of 1887 it was provided that with a

[49] MacMurray, 1896/5.
[50] MacMurray, 1907/10 and note.

view to developing as rapidly as possible the commerce between China and Tonkin the rights of exportation and importation stipulated in Articles VI and VII of the treaty of April 23, 1886, should be provisionally modified so that all foreign goods entering the Chinese provinces of Yunnan, Kwangtung and Kwangsi (the Kwang Provinces) across the frontier should pay three-tenths less duties than the regular tariff, and that the goods from China across the frontier should pay four-tenths less than the regular rate.[51] It has since been further agreed that the rates fixed by the Revised Tariff of 1903 should not be followed, but those of 1858.[52] This agreement is still in force.

According to Article IX of the Regulations of 1894 for trade between Yunnan and Burma,[53] it is provided that imports to China from Burma across the frontier should be allowed a three-tenths reduction from the regular tariff; and that exports to Burma from Yunnan should enjoy a four-tenths reduction.

China Desires Abolition of Special Frontier Trade Regulations. It has been estimated by the Government of China that it annually loses something like 800,000 Taels by reason of the special rates given to frontier trade as described in the preceding sections. At the time that the general customs valuations were revised in 1918 it was urged upon the Powers represented at the Shanghai Conference that these special frontier trade provisions be

[51] *Customs Treaties*, I, 927.
[52] See MacMurray, tariff appended to 1903/5 for the rates fixed in 1903.
[53] MacMurray, 1894/1.

abolished and the regular tariff rates applied. In support of this request it was argued that the special rates had been originally given in order that a frontier trade might be built up, and that this result having been obtained, there was no longer sufficient ground for special treatment. Attention was called to the fact that in the Ili Convention of 1881 (Article XVI) with Russia it was expressly provided that after the overland trade should have been built up the customs dues should be fixed upon the regular five per cent. *ad valorem* basis. Also that Article XV of that Convention had provided that the Overland Trade Regulations should remain in force for ten years, at the end of which period they might be changed by mutual agreement. The demand for the reduction of duties levied at Antung had been based by the Japanese upon the Russian treaties, and, therefore if the concessions to Russia were abolished the basis for a continuance of the concessions to Japanese frontier trade would disappear. As for the frontier trade with Burma it was contended that Great Britain in the Mackay treaty of 1902 had agreed that duties on the Burma-Yunnan frontier should conform to the general regulations concerning overland trade and therefore that she could not properly object if the customs rates for the frontier trade with which she is concerned should be raised in common with other frontier rates.[54] As to the Annam frontier trade, by Article VII of the Franco-Chinese Agreement for Annam the French have agreed that they will accept the same frontier arrangements as are provided for the trade of the Southwest frontier with

[54] As a matter of fact this Burma-Yunnan trade has been inconsiderable in amount.

other countries.[55] Furthermore, the duties on the Annam frontier had been based upon the concessions made by China with regard to Russian frontier trade, and, therefore, if those concessions should be surrendered the basis for the Annam frontier trade would be removed.

Finally, as regards the cancellation of the frontier trade concessions to Russia, it is pertinent to refer to the language of the original Russian Land Trade Regulations of 1869 Article V of which provided that,

> Russian merchants transporting Russian merchandise shall on their arrival at Tientsin pay import duty at the rate of one-third less than that specified in the general foreign tariff. This shall be paid at Tientsin. Merchandise left at Kalgan shall pay import duty at the place according to the general foreign tariff.[56]

It is clear that this provision was intended to have a very limited application, and aimed merely to give encouragement to trade in goods which, at that time, had to be carried a long distance on camel or donkey back in order to be sold in the Tientsin market.[56a]

Enforcement of Customs Regulations. With regard to the enforcement of the customs regulations upon foreigners, difficulty is presented by the fact that, as regards the imposition of fines, the Chinese are obliged to resort to the foreign consuls, and, as we have seen, the authority of these being only over the persons of the offenders, their powers of enforcing the collection of the fines, when

[55] *Customs Treaties*, I, 918.

[56] *Customs Treaties*, I, 155.

[56a] It may be noted that at the time of the revision of the valuations for customs purposes in 1918, the Russian Minister objected to even a *pro rata* increase of the frontier tariff and made a reservation upon this point when accepting the revision.

imposed, are by no means adequate. The result is that, in almost all cases, proceedings are had only against the offending ship or its cargo. For unauthorized trading along the coast, the vessel can be excluded from that trade for the future, a penalty, however, which is never applied; for false "declarations," the goods may be confiscated. To fine the merchant concerned, in addition, while legally possible, is for the reasons that have been stated, seldom attempted.

This [failure to fine] arises partly from the very considerable degree of protection accorded to foreign merchants by treaty, and partly from the fact that there is no competent tribunal before which a revenue case can be carried; the Chinese territorial courts are ruled out, the Consul is necessarily the advocate of his national, and the Commissioner of Customs is party to the case.[57]

When a dispute arises between the customs and the importer regarding the value or classification of goods, the case is referred to a Board of Arbitration composed as follows: an official of the customs; a merchant selected by the consul of the importer; and a merchant, differing in nationality from the importer, selected by the senior consul. The final finding of the majority of the board is binding upon both parties and their decision must be announced within fifteen days of the reference. . . .

In case of confiscation and fine by the customs authorities, there are special rules for joint investigation between the Commissioner of Customs and the consul of the importer. When a ship or goods belonging to a foreign merchant is seized for confiscation, the superintendent of customs notifies those interested, who may, through the consul, demand a public investigation. On the consul's request, the superintendent holds a court at which the consul is present, for the investigation and settlement of the case. When the consul and superintendent agree to confiscate, the merchant has no appeal; when the consul dissents from the superintendent's views, the case is referred to the superior authorities at Peking—

[57] Morse, *Trade and Administration of China*, p. 379.

the Minister of the nation on the one side, and the Chinese Foreign Office on the other.

When the act of which a foreign merchant is accused is one which is punishable by fine, the Commissioner of Customs enters a complaint at the consulate, and the consul will hold a court, the commissioner being present, for the investigation and settlement of the case. When the commissioner dissents from the consul's views, the case will be referred to the superior authorities at Peking.[58]

Native Customs. Distinct from the Maritime Customs to which the preceding discussion has been devoted, are the native or "regular" customs which have existed in China since early times. These have always been controlled by the central government at Peking and their proceeds covered, in theory at least, into its treasury.

These native customs now fall into three classes: (1) the inland customs; (2) the maritime customs at places further distant than fifty li—i. e., about sixteen miles—from a treaty port; and (3) maritime customs at ports within fifty li of a treaty port and since 1901 controlled by the Maritime Customs Service.[59]

[58] Chin Chu, *The Tariff Problem in China*, p. 176. See Hertslet's *China Treaties*, II, p. 655 for Rules agreed upon in 1868 for joint investigation in cases of confiscation and fines by the customs authorities.

[59] The Final Boxer Protocol, enumerating the Chinese revenues assigned as security for the payment of the indemnities, included "the revenues of the Native Customs, administered in the open ports by the Imperial Maritime Customs."

The Sino-British (Mackay) treaty of 1902 provides (Article VIII Sections 10 and 11): "A member or members of the Imperial Maritime Customs Foreign Staff shall be selected by each of the Governors-General and Governors, and appointed, in consultation with the Inspector-General of Imperial Maritime Customs to each province for duty in connection with native customs affairs, consumption tax and native opium taxes. These officers shall exercise an efficient supervision of the working of these departments, and in the event of their reporting any case of abuse, illegal exac-

With regard to native customs, Mr. Gerald King in the article from which we have earlier had occasion to quote, has the following to say:[60]

These native customs are the relics of the old Chinese system which was superseded, for cargo borne in foreign bottoms, by the Maritime Customs. They also deal with the junk-borne cargo from unopened port to unopened port. By the Peace Protocol of 1901, these within a 50 li radius of the Treaty Ports were placed under the control of the Commissioner of Customs. More difficulty was experienced in enforcing this stipulation, as the Chinese policy of patient unvarying obstruction came into its own once the armed forces of the allied Powers were withdrawn. No one tariff exists for the native customs. Each group has a different one, and in many cases each office in each group has a tariff of its own. These are usually based on tariffs of the Ming dynasty, and deal with a trade that has long ceased to be troubled with taxes. As in all cases of Chinese rules or regulations, the rules are not so objectionable as the exceptions, which are the majority. Every compradore can supply instances of the curious extra charges which these stations levy, and the exceptions made in favor of certain classes of goods, or of goods borne in junks belonging to certain guilds, etc.

tion, obstruction to the movements of goods, or other cause of complaint, the Governor General or Governor concerned will take immediate steps to put an end to the same."

"Cases where illegal action as described in this Article is complained of shall be promptly investigated by an officer of the Chinese Government of sufficiently high rank in conjunction with a British officer and an officer of the Imperial Customs, each of sufficient standing; and in the event of its being found by a majority of the investigating officers that the complaint is well founded and loss has been incurred due compensation is to be at once paid from the surtax funds, through the Imperial Maritime Customs at the nearest open port. The high Provincial officials are to be held responsible that the officer guilty of the illegal action shall be severely punished and removed from his post. If the complaint turns out to be without foundation complainant shall be held responsible for the expenses of the investigation." Similar provisions are to be found in the Sino-American treaty of 1903.

[60] *Far Eastern Review*, February, 1919, p. 72.

The Maritime Customs have tabulated the tariffs of those native customs under their control, and increased the efficiency of the working. All traffic in native-owned junks must pass through the native customs, and the payment of native customs charges does not free them from further taxation: it is the first step on the ladder. They have then to pay all the likin and other charges in force on the route over which they have to pass. The native customs are not as vexatious as likin. But they are in general ill-administered, and, as in all things under purely Chinese management, there are many complaints of squeezes and delays. Their whole policy is now out of date. Before there were other customs to deal with goods coming from other countries, it was right that China should charge goods coming for sale in her marts. But now there is a properly equipped service dealing with foreign imports and exports, it is obviously against China's own interests to tax her inter-port trade. Their abolition, though impracticable today, would be a benefit to the community.

No estimate can be made of the trade passing through the native customs, and the revenue derived from them. No statistics are published, and, as has already been said, there is no tariff or set of rules. The figures must be large, but there is no way of arriving at any estimate of the number of junks engaged in the trade, the value or kind of the goods they carry, or the amount of duties they pay. Their working is entirely separate from that of the Maritime Customs.

The Chinese Post Office. Until 1911 the Chinese Postal Service, created by an imperial decree of March 20, 1896, was under the direction and control of the Maritime Customs, and for its development great credit is due to Sir Robert Hart. In 1911 the service was divorced from the customs and placed under the ministry of Posts and Communications. On March 1, 1914, China announced her adherence to the International Postal Union. For sometime prior to that date, however, China had had working

relations with the Union, conforming to its requirements, and, in effect, getting the benefits of membership.[61]

By a provision inserted in an Exchange of Notes of April 9, 1898 between China and France relative to the railway from Tonkin to Yunnanfu and the lease of Kuangchouwan it was agreed by the Chinese Government that when it should organize a definite postal system with a high functionary at its head it would give consideration to the recommendations of the French Government concerning the choice of foreign officials to be appointed.

At the present time, the postal service in China is one for which the government deserves great credit. Generally speaking, the service is efficiently operated, and with reasonable financial success, notwithstanding the fact that China has been obliged to acquiesce in the operation within her borders of some sixty or more foreign post-offices—British, French, Japanese, German (until 1917), Russian and American.[62]

The technical treaty or legal right of the powers to maintain post offices on Chinese soil is very doubtful. Upon this point we may quote a letter of April 20, 1902, of the American Minister at Peking to his government.[63]

> I have given to the question such investigation as I have been able, and report that in my judgment foreign post offices in China, except at Shanghai, are not a necessity, because the Chinese postal

[61] For an account of the development of the Chinese postal system, see Vol. III, Chap. 3 of Morse's *International Relations of the Chinese Empire.* See also MacMurray, 1906/3 with notes attached thereto for correspondence and negotiations connected with the admission of China to the International Postal Union.

[62] America has but one such office—that at Shanghai.

[63] *U. S. For. Rels.*, 1902, p. 225.

service under the imperial maritime customs is everywhere giving fairly satisfactory service and is rapidly and effectively increasing and extending into the interior.

The foreign post offices are being established principally for political reasons, either in view of their future designs upon the Empire, to strengthen their own footing, or because jealous of that of others. They are not established with the consent of China, but in spite of her. They will not be profitable. Their establishment materially interferes with and embarrasses the development of the Chinese postal service, is an interference with Chinese sovereignty, is inconsistent with our well-known policy toward the Empire, and I cannot find any good reason for their establishment by the United States.

At Shanghai, where the foreign mail routes center, they are important, especially in taking charge of and starting the mails homeward, particularly since China is not a member of the International Union (since March 1, 1914, she has been a member). China appreciates this situation, and is willing, in fact, desires, that they should remain there.

In a communication addressed to the Postal Union by the Postmaster General of China, under date of March 18, 1915, the following argument was presented to show the impropriety upon the part of the Treaty Powers of continuing to maintain their own post offices in China. After referring to pertinent provisions of the Universal Postal Convention and of the *Règlement d'Exécution,* the communication continues: "Relying upon the principles inscribed in the Universal Postal Convention and in agreement on this point with the jurists in international law of all countries, China considers that by virtue of its entry into the Union, the officers maintained upon its territory by other countries of the Union have ceased to have a legal existence. Although in consequence of the difficulties mentioned above and those that have

their origin in the present events of the war, China has found itself obligated, in order not to impede the transmission of its mails, to continue temporarily for the purpose of its relations with other countries to have recourse to the intermediation of certain of the foreign post offices established upon its territory, or to accept this intermediation, it must declare that this course of action implies no recognition on its part of the legality of those offices, and furthermore that no status, in that respect, can be created by the written communications that have been or that may hereafter be exchanged in regard to them, either with those offices or with the administrations to which they belong. China protests against the maintenance, by the majority of the foreign post offices operating upon its territory, of tariffs lower than those fixed by Article 5 of the Rome Convention, for the payment of postage upon mails exchanged by those offices, either between themselves or with the countries to which they respectively belong. . . .

China having adhered as from September 1 last to the Rome Convention concerning the exchange of parcels post, must declare that what has been said above, in regard to the temporary continuation, necessitated by circumstances, of the intermediation of foreign post offices established upon its territory, applies likewise to the parcels post service." [64]

The article of the Universal Postal Convention referred to by the Chinese reads as follows:

[64] MacMurray gives a list (1906/3, note,) together with the texts of postal agreements which appear to have been cancelled by the adherence of China to the International Postal Convention and Parcels Post Convention of May 26, 1906.

The countries between which the present convention is concluded, as well as those which may adhere to it hereafter, form under the title of Universal Postal Union a single postal territory for the reciprocal exchange of correspondence between their post offices.

This provision, the Chinese Government argued, caused the Postal Union to be composed of the totality of adhering countries, and not of postal administrations within a country.

No result has as yet followed from this protest on the part of China.

CHAPTER IV

Inland Navigation

In most of the developed countries of the world the rights of inland navigation are reserved for citizens or subjects respectively of those countries. In China, however, by treaties beginning with that of 1858, which opened up the Yangtze River to British traders, nearly all of the inland waterways have been made navigable for trade by foreigners.

Inland Steam Navigation Regulations of 1898. By amended regulations issued by the Commissioner of Customs, July 28, 1898, the rules relating to inland steam navigation were revised and amended. The more important of the rules thus fixed were as follows:

The expression "inland waters" was declared to have a meaning similar to that attached to places in the interior according to the Chefoo Convention.[1]

These waters are declared to be open to all such steamers, native or foreign, as are specially registered at the Treaty Ports for that trade, but they are required to confine their trade to the inland waters and not to proceed

[1] "The words 'nei-ti,' inland, in the clause of Article VII of the Rules appended to the Tariff regarding carriage of imports inland, and of native produce purchased inland, apply as much to places on the sea-coasts and river shores as to places in the interior not open to foreign trade; the Chinese Government having the right to make arrangements for the prevention of abuses thereat." Par. 4, Section III. In the Regulations the reference is wrongly given to Article IV.

to places outside of China. Such registered steamers may ply freely within the waters of the ports without reporting their movements to the Customs officials, but are obliged to report their departure from and return to the port. No unregistered vessel is to be allowed to ply inland.

Dutiable cargo shipped under these Regulations at any Treaty Port on a registered steamer for conveyance to the interior must be declared at the Custom House and pay on export such duties as the Customs decide to be leviable. Dutiable cargo brought from inland to a Treaty Port is to be in like manner dealt with by the Custom House there. As to duties to be paid by vessels belonging to foreign merchants, they are to be in accordance with the treaty tariff.

Cargo landed or shipped inland is to pay at the place of landing or shipment whatever duty and Likin local regulations call for.

Offences inland, whether against revenue laws or affecting person or property are to be dealt with by the local authorities of the district in the same way as if they were committed by their own people; but if the vessel concerned is foreign-owned or the Chinese implicated is a Chinese employed on board such foreign-owned vessel, the local authorities are to communicate with the nearest Commissioner of Customs, and the Commissioner, in turn, with the Consul, who may send a deputy to watch the proceedings. If the foreigner claims the status of a foreigner, he is to be treated in the manner prescribed in the treaties where foreigners without passports are arrested, and sent to the proper Consul through the Commissioner of Customs at the nearby port.

If any such steamer passes any inland station or Likin barrier that ought to be stopped at without stopping, or if any of the passengers, crew, etc., create trouble inland, the vessel may be fined or punished according to the station regulations, and the Customs may cancel the ship's papers and refuse permission for her to trade inland again.

In cases where foreign-owned vessels are concerned, the merchants interested may elect to bring the whole case and the question of

fine before a Joint Investigation Court, to be dealt with according to the regulations for cases of fine and imprisonment in the year 1868.[2]

By Supplementary Rules promulgated in September, 1898, the following was declared:[3]

All inland-going steamers are to pay tonnage dues once in four months at the treaty tariff rate, at the port where registered.

Steamers are not permitted to land cargoes except at places ordinarily recognized as places of trade for native vessels.

The customs authorities at the Treaty Ports are required to give certificates detailing the cargoes shipped there under their cognizance, which certificates are to form the basis for duty payments at way stations, and the vessels, unless suspected of smuggling, are not to be detained for rigid examination.

The provincial authorities are to appoint at each Treaty Port a responsible officer who is to collect on provincial account the prescribed duties on goods coming from or going inland. He is to receive in one lump sum all the dues and duties that a vessel lading for a given destination is bound to pay at the various stations it will pass on its way. Upon presentation of the receipt for this payment the goods covered are to be exempt from levy of duty or vexatious examination.

Yangtze Regulations of 1898. For trade on the Yangtze special regulations were issued in August, 1898, by the Commissioner of Customs.[4]

[2] MacMurray, No. 1898/17.
[3] *Id.* No. 1898/17.
[4] MacMurray, No. 1898/18.

The merchant vessels of the Treaty Powers were authorized to trade at certain specified Treaty Ports and to land and ship goods in accordance with special regulations at certain enumerated non-treaty ports. Shipment or discharge of cargo at other points on the river was prohibited. However, it was provided that passengers and their baggage might be landed or shipped at any of the regular passenger stations—the baggage, however, upon pain of confiscation, not to contain articles subject to duty.

Merchant vessels trading on the river were divided into three classes: (1) sea-going vessels for voyage up river beyond Chinkiang; (2) river steamers running regularly between any of the river ports to Shanghai and any river port; and (3) small craft—lorchas, junks, etc. These vessels to be dealt with according to treaty provisions, the rules of the ports traded at, and the special provisions of the Yangtze Regulations thereinafter contained.

Revision of Rules in 1902. Article X of the Sino-British Treaty of 1902 provided that the rules relating to inland navigation should be revised and added to, and such revision and addition was attached to the treaty as Annex C. By these new regulations, British (and therefore other foreign) steamship owners are to have the right to lease warehouses and jetties on the banks of waterways for terms not exceeding twenty-five years, with option of renewal on terms to be mutually agreed upon. Such jetties, however, are not to be erected in such position as to obstruct the inland waterway or interfere with navigation. The sanction of the nearest Com-

missioner of Customs is to be obtained, which sanction is not to be arbitrarily withheld.

Foreign merchants are to pay taxes and contributions on these warehouses and jetties on the same footing as Chinese owners of similar properties.

Only Chinese are to be employed to reside in the warehouses so leased, but the foreign merchants may visit such places from time to time to look after their affairs. The jurisdiction of the Chinese authorities over the Chinese in foreign employment is not to be diminished or interfered with in any way.

Steam vessels are declared liable for any loss caused to riparian proprietors by damage done to the banks or works on them or for losses caused by such damage. If it is thought necessary to prohibit the use of shallow waterways by foreign launches, as likely to cause injury to the banks, this shall be proper provided a similar prohibition applies to Chinese launches.

"The main object of the British Government," it is declared, "in desiring to see the inland waterways of China opened to steam navigation being to afford facilities for the rapid transport of both foreign and native merchandise, they undertake to offer no impediment to the transfer to a Chinese company and the Chinese flag of any British steamer which may now or hereafter be employed on the inland waters of China, should the owner be willing to make the transfer. In the event of a Chinese company registered under Chinese law being formed to run steamers on the inland waters of China, the fact of British subjects holding shares in such company shall not entitle the steamers to fly the British flag."

Registered steamers and their tows are forbidden to carry contraband.

A registered steamer may ply within the waters of a port, or from one open port to another open port or ports, or from one open port or ports to places inland, and thence back to such port or ports. She may, on making due report to the Customs, land or ship passengers or cargo at any recognized places of trade passed in the course of the voyage; but may not ply between inland places exclusively except with the consent of the Chinese Government.

Any cargo and passenger boats may be towed by steamers. The helmsmen and crew of any boat towed shall be Chinese. All boats, irrespective of ownership, must be registered before they can proceed inland.[5]

Foreign Warships on Inland Waters. Some differences of opinion have arisen between the Chinese authorities and the Treaty Powers with regard to the right of the warships of the latter to visit inland ports in China. This right has been insisted upon by the Powers, but in order to sustain their contention they have been obliged to give very liberal interpretations to the single treaty stipulation to which they have been able to refer. This stipulation is found in Article LII of the Sino-British Treaty of 1858, which reads as follows:

"British ships of war coming for no hostile purpose, or being engaged in the pursuit of pirates, shall be at liberty to visit all ports within the dominions of the Emperor of China, and shall receive every facility for the purchase of provisions, procuring water, and, if occasion require, for the making of repairs. The com-

[5] Article VIII of the Sino-Japanese Treaty of 1903 also provided for a revision of the Inland Steam Navigation Regulations, and this revision, practically identical with that attached to the British treaty, is contained in Annexes 1 and 2 to the Japanese treaty.

manders of such ships shall hold intercourse with the Chinese authorities on terms of equality and courtesy."

This treaty provision was appealed to by the American authorities in 1903 when the American gunboat *Villalobos* was sent to certain places on the upper Yangtze and protest thereto filed by the local Taotai. The correspondence that then ensued having been sent to Washington, the Secretary of State wrote to the Secretary of the Navy:

> The Department is inclined to the opinion that Rear-Admiral Evans [then in command of the Asiatic Fleet] is right in his contention that our gunboats may visit the inland ports of China, including those which are not treaty ports. Even if this right were not granted us by treaty, Rear-Admiral Evans is unquestionably right in using it when like ships of other Powers are constantly doing so. . . . This Department thinks, however, that Article LII of the British Treaty of 1858 with China which is reproduced in Article XXXIV of the Austro-Hungarian Treaty of 1869, gives full authority for his course.[6]

Foreign Surveys of Chinese Ports. In 1890 the question arose as to the right of foreign war vessels to make surveys and soundings in Chinese closed ports without first obtaining the consent of the Chinese authorities. The right to do so was insisted upon and based upon the provision of Article IX of the Sino-American Treaty of 1858, which declares:

> Whenever national vessels of the United States of America, in cruising along the coast and among the ports opened for trade for the protection of the commerce of their country, or for the advancement of science, shall arrive at any of the ports of China, the commanders of said ships and the superior local authorities shall.

[6] *U. S. For. Rels.*, 1903, pp. 85-90.

if it be necessary, hold intercourse on terms of equality and courtesy in token of the friendly relations of their respective nations; and the said vessels shall enjoy all suitable facilities on the part of the Chinese Government in procuring provisions or other supplies and making necessary repairs. And the . . . national vessels of the United States shall pursue . . . pirates, and if captured deliver them over for trial and punishment.

Writing to the Chinese Foreign Office on August 4, 1890, the American Minister argued that the coasts of China, if uncharted, are very dangerous to navigation; that the Chinese authorities had failed to chart them, place buoys, or erect lighthouses; that ships have the right to seek refuge in Chinese ports in case of accident or dangerous weather, or to pursue pirates; that they cannot do so unless those ports have been surveyed and marked with buoys and lighthouses; and that, therefore, no objection should be raised by the Chinese officials to the exercise of a right on the part of foreign scientific officers to continue and complete the hydrography of all the ports of China.[7]

---

[7] *U. S. For. Rels.*, 1890, p. 194.

CHAPTER V

Patent Rights, Trade-Marks and Copyrights and Foreign Corporations in China

---

Treaty Provisions. Patent rights, trade-marks, and copyrights receive inadequate protection in China. There are no effective Chinese laws governing these matters, and, therefore, the Foreign Powers have sought by treaty stipulations to obtain for their nationals at least a certain amount of protection. The more important of these treaty provisions are given below. Article VII of the Anglo-Chinese (Mackay) Treaty of 1902 reads as follows:

Inasmuch as the British Government affords protection to Chinese trade marks against infringement, imitation or colourable imitation by British subjects, the Chinese Government undertakes to afford protection to British trade-marks against infringement, imitation or colourable imitation by Chinese subjects.

The Chinese Government further undertake that the Superintendents of Northern and Southern Trade shall establish offices within their respective jurisdictions under control of the Imperial Maritime Customs where foreign trade-marks may be registered on payment of a reasonable fee.

Article V of the Sino-Japanese Treaty of 1903 reads:

The Chinese Government agree to make and faithfully enforce such regulations as are necessary for preventing Chinese subjects from infringing registered trade-marks held by Japanese subjects.

The Chinese Government likewise agree to make such regulations as are necessary for affording protection to registered copyrights

held by Japanese subjects in the books, pamphlets, maps and charts written in the Chinese language and specially prepared for the use of the Chinese people.

It is further agreed that the Chinese Government shall establish registration offices where foreign trade-marks and copyrights, upon application for the protection of the Chinese Government, shall be registered in accordance with the provisions of the regulations to be hereafter framed by the Chinese Government for the purpose of protecting trade-marks and copyrights.

It is understood that Chinese trade-marks and copyrights properly registered according to the provisions and regulations of Japan will receive similar protection against infringement in Japan.

This Article shall not be held to protect against due process of law any Japanese or Chinese subject who may be the author, proprietor or seller of any publication calculated to injure the well-being of China.

The provisions of Articles IX, X, and XI of the Sino-American Treaty of 1903 read as follows:

Article IX. Whereas, the United States undertakes to protect the citizens of any country in the exclusive use within the United States of any lawful trade-marks, provided that such country agrees by treaty or convention to give like protection to citizens of the United States:

Therefore the Government of China, in order to secure such protection in the United States for its subjects, now agrees to fully protect any citizen, firm or corporation of the United States in the exclusive use in the Empire of China of any lawful trade-mark to the exclusive use of which in the United States they are entitled, or which they have adopted and used, or intend to adopt and use as soon as registered, for exclusive use within the Empire of China. To this end the Chinese Government agrees to issue by its proper authorities proclamations, having the force of law, forbidding all subjects of China from infringing on, imitating, colorably imitating, or knowingly passing off any imitation of trade-marks belonging to citizens of the United States, which shall have been registered

by the proper authorities of the United States at such offices as the Chinese Government will establish for such purpose, on payment of a reasonable fee, after due investigation by the Chinese authorities and in compliance with reasonable regulations.[1]

ARTICLE X. The United States Government allows subjects of China to patent their inventions in the United States and protects them in the use and ownership of such patents. The Government of China now agrees that it will establish a Patent Office. After this office has been established and special laws with regard to inventions have been adopted it will thereupon, after the payment of the prescribed fees, issue certificates of protection, valid for a fixed term of years, to citizens of the United States on all their patents issued by the United States, in respect of articles the sale of which is lawful in China, which do not infringe on previous inventions of Chinese subjects, in the same manner as patents are to be issued to subjects of China.

ARTICLE XI. Whereas, the Government of the United States undertakes to give the benefits of its copyright laws to citizens of any foreign State which gives to the citizens of the United States the benefits of copyright on an equal basis with its own citizens:

Therefore, the Government of China, in order to secure such benefits in the United States for its subjects, now agrees to give full protection in the same way and manner and subject to the same conditions upon which it agrees to protect trade-marks, to all citizens of the United States who are authors, designers or proprietors of any book, map, print or engraving especially prepared for the use and education of the Chinese people, or translation into Chinese of any book, in the exclusive right to print and sell such book, map, print, engraving or translation in the Empire of China

[1] The United States has entered into a large number of agreements with other Powers for the reciprocal protection in China of the trade-marks of their respective citizens or subjects. These, with their dates have been as follows: Great Britain, June 28, 1905; France, October 6, 1905; Netherlands, October 23, 1905; Belgium, November 27, 1905; Germany, December 6, 1905; Italy, December 18, 1905; Russia, June 28, 1906; Denmark, June 12, 1907; Sweden, March 7, 1917; Japan, May 19, 1908. All of these agreements, except the Convention with Japan, were embodied in an "Exchange of Notes."

during ten years from the date of registration. With the exception of the books, maps, etc., specified above, which may not be reprinted in the same form, no work shall be entitled to copyright privileges under this article. It is understood that Chinese subjects shall be at liberty to make, print and sell original translations into Chinese of any works or of maps compiled by a citizen of the United States. This article shall not be held to protect against due process of law any citizen of the United States or Chinese subject who may be author, proprietor or seller of any publication calculated to injure the well-being of China.

Copyrights. Experience has shown that the Article of the Sino-American Treaty relating to copyrights was so poorly drawn as to give little protection in China to the American author or publisher. This was shown in the suit brought by Ginn & Company, an American publishing firm, in the Shanghai Mixed Court in March, 1911, to restrain the publication and sale by the Commercial Press of Shanghai of the text-book, Myer's *General History*. In this case was shown a clear instance of "piracy" upon the part of the Shanghai firm, but inasmuch as it also appeared that the book in question was neither a republication of a volume originally issued in the Chinese text by the American firm, nor a volume which had been "especially prepared for the use and education of the Chinese people," it was held by the court that the case was not brought within the terms of the American treaty.

In some instances the Chinese provincial authorities have issued orders prohibiting within their jurisdiction the republication and sale of foreign copyrighted books without regard to whether they were originally prepared for the use and education of the Chinese pople; but where this has been done it has been an *ex gratia* matter rather than one of obligation.

Patents. From the treaty provisions which have been quoted it is seen that China has promised to establish a patent office and to issue certificates having legal force adequate for the protection of foreign patent rights. This she has not done, the reason, in considerable measure, being that such regulations as she proposed from time to time did not meet with the approval of all the Treaty Powers.

The delay in the issuance of patent regulations has also been due to the fact that the Chinese Government has held that it would be best first to draft a set of trade-mark regulations which would be satisfactory to the Powers, and then upon the basis of these, later to elaborate rules for the protection of patents. The issuance of these trade-mark regulations, as will later be seen, has been postponed owing to the difficulty in securing the approval of the Powers to those which China proposed to establish.[2]

As will presently be pointed out, the Chinese have opened provisional offices in Tientsin and Shanghai for the "registration" of trade-marks. The practice has grown up of also registering patents in these same offices. Such registration is, strictly speaking, without legal significance, but it is likely that it will have some probative force as to priority of claim, and certainly some moral force, when, a patent office having been opened, the inventions in question are presented for recognition.

Trade-Marks. In pursuance of her treaty provisions China promulgated in 1904 an elaborate set of trade-

[2] *U. S. For. Rels.*, 1906, Part I, p. 260.

mark regulations.[3] These met with the approval of the American Government, but were objected to by a number of the other Powers with the result that, after being in force for a time, they were withdrawn. In 1906 a fresh draft of regulations was drawn up by the Chinese Government which, however, made scarcely a pretense of meeting the wishes that had been expressed by the Powers, and, consequently, they have objected to their being put into force. The result has been that, to the time of the presenting writing (1920) no trade-mark regulations, emanating from the Central Government and therefore binding throughout China, have been issued. However, in 1907, the Shanghai Taotai issued a proclamation, binding within his own jurisdiction, which was intended to give protection against infringements of foreign trade-marks regarding certain specified articles (cigarettes manufactured by the British-American Tobacco Company and soaps for which the firm of A. R. Burkill & Sons were the agents). A little later, upon request of the American Consul-General at Shanghai, another proclamation was issued by the Taotai with regard to American goods the trade-marks of which were being counterfeited in the Chinese markets.[4] It is

[3] For text of these see *U. S. For. Rels.*, 1906, Pt. 1, p. 237.

[4] *U. S. For. Rels.*, 1907, Pt. 1, p. 262. In this proclamation the Taotai quoted the following from a letter which he had received from Mr. Denby, the American Consul General:

"It has been reported to me by merchants of my country that recently unscrupulous Chinese are manufacturing imitations of well-known American brands of goods, such as kerosene oil, soap, Eagle brand of milk, stoves, stockings, etc. in order to make profit. . . . . This is not right and if allowed to continue will lead to friction between two friendly nations." Concluding his Proclamation, the Taotai said: "Besides having replied to the above letter and ordered all officials under my jurisdiction to forbid

the contention of the American Government that the Chinese are obligated to issue such proclamations whenever requested, and when patents or trade-marks are locally registered the Legation or Consulate asks that a protecting proclamation be issued.

Although, as has been said, there are no general trade-mark regulations in China that have been issued by the Central Government, the Commissioners of Customs at Tientsin and Shanghai have been directed by the Peking authorities to open provisional offices for the registration of foreign trade-marks, and the practice has grown up of also registering patents there. It is conceded, however, that this registration gives no real legal protection to the trade-mark. It does, however, furnish evidence as to priority of use in the particular market; and this is an important matter since Chinese law recognizes as a property right entitled to legal protection, the "chop" or sign or label under which a commodity is sold.[5]

such imitations, I issue this Proclamation for the information of all classes that no one is hereafter allowed to imitate the Standard Oil Company's registered brands, and should such case be discovered punishment and fine will be imposed upon the imposter."

It was pointed out that by thus mentioning specifically the Standard Oil trade-marks the general force of the prohibition was much weakened. The American Consul-General, however, took the ground that inasmuch as the Taotai had "ordered all officials under his jurisdiction to forbid such imitations," the prohibition could and should be construed to cover all American trade-marks.

[5] The procedure of registering trade-marks at Tientsin is not exactly the same as at Shanghai. At Shanghai the trade-mark is filed at the Customs House by the consul or official without formal application, a fee of five customs taels being paid; at Tientsin a formal application for registration, in English and Chinese, on a special form has to be made by the applicant or his authorized attorney, six copies of the trade-mark furnished, a certified copy of an extract from the foreign register, if the trade-mark has been registered elsewhere, must be furnished, and a fee of five customs taels paid.

Vaseline Case. In connection with the protection of American trade-marks in China a very interesting point of jurisdiction was raised in a case instituted in 1915 in the Mixed Court at Shanghai, by the Chesebrough Manufacturing Company, an American corporation, for redress against a Chinese firm for selling a Japanese product under the trade-mark "Vaseline," which trade-mark was the property of the American firm, and which it had duly registered in China.

When this case was about to come up for a hearing, the Japanese Consul-General at Shanghai requested that the Japanese Assessor be allowed to sit with the American and Chinese officials, and that, in all cases involving Japanese goods, even when covered by a trade-mark that was in imitation of an American trade-mark but where a certificate of registration had been granted by the Tokyo authorities, no further action should be taken by the Mixed Court, and that the parties conceiving themselves to be aggrieved, should resort to the registration office in Japan. The Japanese Consul-General later withdrew his request to have his Assessor participate in the judgment, but continued his request that his Assessor be allowed to be present and observe the proceedings. To this last request there was no objection, for it is usual to permit the Assessor of any country to sit and merely watch proceedings in the Mixed Court when it is asserted that interests of his nationals are indirectly, if not directly, involved in the proceedings. But there was strong objection to the claim of the Japanese Consul-General that the Chinese Mixed Court was without jurisdiction in cases in which it was charged that Chinese were selling Japanese manufactured goods under trade-marks registered by the

Japanese manufacturers with their own Government in Tokyo, and this without regard to the fact that the trade-mark might be a clear imitation of an American trade-mark.

By the treaty of May 19, 1908, between Japan and the United States it had been provided that "The subjects or citizens of each of the high contracting parties shall enjoy the same protection, as in the territories of the other, against the infringement, at any point in China by the subjects or citizens of the other, of a patent granted, or design or trade-mark registered at the proper office of the other." But in the Chesebrough case, the American company had not registered its trade-mark in Japan. The question therefore resolved itself into this: could the fact that a trade-mark had been registered in Japan by the Japanese manufacturer protect Chinese defendants in China against suits brought against them in the Chinese courts charging them with violating rights secured to the American complainants by Chinese laws and treaties?

In an official communication of the Japanese Consul-General to the American Consul-General at Shanghai, dated February 17, 1915, it was declared:

I have received an instruction from our Government which runs substantially as follows:

Although the present [Vaseline] case is one which relates apparently to the American and Chinese, it is in fact nothing but a dispute between like trade-marks possessed by our both nationals. As the trade-mark of the above named American is not registered in Japan, it is not a case coming within the terms of the treaty between Japan and the United States, relating to the mutual protection of Patents, Trade-Marks, etc. Moreover, by virtue of Article V of the Supplementary Treaty of Commerce and Naviga-

tion of 1904 concluded between China and Japan, China takes upon herself an obligation to protect our registered trade-marks. It will consequently constitute a violation of the treaty if the Mixed Courts will prohibit the sale by Chinese of any merchandise by sole reason of bearing the trade-mark possessed by Matsumoto.

To this contention on the part of the Japanese Government, the American Government entered a strong protest, the point being made that what was asked was, in effect, that the operation of Japanese domestic regulations should be extended into Chinese territory with the result that Americans would, or might be, deprived of the right to enforce in the courts of China and against Chinese nationals, rights secured to Americans by the Sino-American Treaty of 1903. In other words, that thus a matter of Chinese law should be relegated to the determination of Japanese tribunals in Japan.

In a communication sent by the American Minister at Peking to the American Consul-General at Shanghai, it was said:

In view of the Legation, the question of the ownership of any trade-mark in China is one of fact as to priority of use and adoption for the trade in China; the essential facts in such cases are determinable in accordance with the legal system and institutions applicable by the jurisdiction to which appeal must be made in order to establish and protect these rights in this country.

Attention was also called to Article IX of the Treaty of 1903, which has been earlier quoted. Under the provisions of this Article, it was declared, the Chesebrough Company was clearly entitled to have its trade-mark protected. "The Legation considers," the communication continued, "that the duty of the Chinese authorities to protect the Vaseline trade-mark as against their own

nationals is a matter of treaty obligation by China to the United States: and it fails to understand on what grounds a third party can claim to intervene against the enforcement of that obligation."

The Japanese Government had referred, in support of its position to Article V of the Sino-Japanese Treaty of 1903 which reads:

> The Chinese Government agree to make and faithfully enforce such regulations as are necessary for preventing Chinese subjects from infringing registered trade-marks held by Japanese subjects.

To the argument based upon this provision, the American Minister in the communication referred to, replied:

> But this provision would sustain his [the Japanese Consul-General's] contention only if it were assumed that the phrase "registered trade-marks held by Japanese subjects" refers to registration in Japan rather than in China. That such is not the true meaning of the provision, however, is to be inferred from the terms of mutuality in which the fourth paragraph of the same article provides for the protection by the Japanese Government of the trade-marks "properly registered according to the provisions of the laws and regulations of Japan." But even if the terms of the Japanese treaty did not so manifestly contemplate registration in China as a condition precedent to the protection of Japanese (as of American) trade-marks, I should find it impossible to reconcile myself to the assumption that registration in Japan—a unilateral domestic act involving no consent or even cognizance on the part of either Chinese or Americans—could have the effect of nullifying rights accruing to Americans in China and protected by treaty between China and the United States, or could make the right to protection in such cases subject to determination by judicial processes in Japan. . . . The fundamental error in the position taken by the Japanese Government in the present case seems to lie in the assumption that registration of trade-marks in Japan does not merely constitute a basis for judicial procedure in Japanese

domestic and extraterritorial courts, but that it creates in favor of its nationals an abstract and absolute property right enforceable even under Chinese jurisdiction without regard to the requirements of Chinese law. The Legation considers that if this contention were conceded it would render potentially subject to Japanese law and jurisdiction the claim of Japanese subjects to use in China any American trade-mark which they might find it expedient to adopt by registration at home, and would effectually annul the only protection for American industrial property rights which now exist in China.

In result, after considerable delay, the Mixed Court rendered a judgment in which the American contention was substantially upheld.

It is impossible to deny the correctness of the contentions of the American Government in this important case. Of course the case would have presented a different aspect had the trade-mark borne by the goods in question been registered in China by the Japanese manufacturer. There would then have been a question as to which of the two registrations in China—the American and the Japanese—was entitled to recognition and protection.

Similar to the Vaseline case was one involving a German manufactured product sold by Chinese merchants which was an imitation of the American Eagle Brand of Condensed Milk, of prior use in Chinese markets. In this case it was suggested that the matter be referred to the Legations at Peking of the interested parties. The American Government refused to assent to this and asserted: " It is the view of our Government that the judicial protection of American trade-marks in China, against the infringement or dealing in infringements by Chinese vendors, is an absolute treaty obligation undertaken by the Chinese Government which cannot

be suffered to be questioned or made subject to the veto of the Chinese executive authorities and in which the consular or diplomatic representatives of a third Power can have no *locus standi* by reason of the fact that the infringements originated in their country . . . and that the Consulate General should therefore use all proper endeavors to bring about the decision of the case by the Mixed Court."[6]

Trade-Marks in the Consular Courts. Most of the Treaty Powers in China have given assurance to each other that in their respective consular courts adequate protection will be given to trade-marks duly registered in the other countries against imitations or improper use on the part of their respective nationals.[7]

It is to be observed that if the owner of a patent or trade-mark has not registered it in a foreign country he has no recourse against a national of that country for infringement, for the consular courts apply to the defendants the laws of their own country.[8]

Foreign Corporations in China. The Chinese law provides for the organization in China of business corporations, but this right is not often availed of by foreigners for the reason that if they obtain charters from their own governments the corporations as juristic nationals of these countries enjoy in China extraterritorial privileges,

[6] Letter of the American Minister at Peking of June 16, 1915 to the American Consul-General at Shanghai.

[7] *U. S. For. Rels.*, 1905, pp. 169, *et seq.* See *ante* p. 171, note 1.

[8] As to advice regarding this matter as well as generally the conduct of business in China, see the pamphlet "The Conduct of Business in China" issued in 1919 by the Bureau of Foreign and Domestic Commerce of the United States Department of Commerce (Miscellaneous Series, No. 70).

that is, they can be sued only in their respective consular courts. Hongkong has its own corporation laws which are greatly used for the organization of companies doing business in China.[9]

The Chinese corporation law does not discriminate against foreigners except in the case of mining enterprises. It is required, in these enterprises, that one-half of the capital invested shall be of Chinese origin.

Foreign corporations, of course, enjoy no greater rights than "natural persons" as regards landholding and carrying on business outside of the Treaty Ports.

American corporations intending to do business in China are recommended to register with the nearest American consul. As a condition upon which such registration will be accorded, the applicants are required to show, to the satisfaction of the consul, that a substantial American financial interest is involved, that the corporation maintains an American officer or agent in China, and that a partnership is represented in China by an American partner or agent for the purpose of service of judicial process. It is also required that the applicant should furnish an authenticated copy of the articles of incorporation, and a statement under oath, showing the names, nationality, and residence of the officers, directors and stockholders, and the extent of their respective interests. In the case of a partnership, the articles of partnership agreement are to be furnished, and a sworn statement of the names, nationality, residence and financial interests

[9] For the text of the "China (Companies) Order in Council," of November 30, 1915 of the British Government regulating the granting of Hong Kong charters, especially with reference to foreign interests therein, see *China Year Book*, 1919, pp. 647-651. See *infra* for the Revised Regulations of 1919.

of the partners. It is recommended that this registration be annually renewed. This fact of registration does not operate as conclusive evidence that the corporation is an American chartered company, and does not carry with it the implication that the concern is necessarily entitled to diplomatic protection or intervention on the part of the American Government.

Acting under direction from the American Legation, American consuls have been directed to refuse registration in cases in which it does not appear that substantial American financial interests are involved or that an American officer of the company resides in China.

It is usual to file in the office of the American Legation the articles of incorporation of American chartered companies doing business in China. The American companies usually secure charters under the laws of one of the States of the Union. It has, however, been held by the United States Court for China that they may incorporate under the provisions of the Act of Congress of March 2, 1903, in amendment to the civil code of the Territory of Alaska, providing for the incorporation of companies.[10]

As regards the legal and diplomatic protection which the American Government will give to business companies possessing American charters and doing business in China, but which in fact represent foreign financial or commercial interests, we can, perhaps, do no better than make the following excerpts from a letter of instructions sent, April 15, 1910, by the American Secretary of State to the American Legation at Peking to be sent to the various American consulates in China.[11]

[10] F. J. Raven et al. *v.* Paul McRae, *Millard's Review*, January 31, 1920.
[11] *U. S. For. Rels.*, 1910, p. 197.

In the question of the status which would be given in China to American corporations whose stockholders are mainly foreigners there appear to be two distinct elements:

(*a*) The right which such corporations might have to diplomatic protection or intervention of this Government.

(*b*) The right which such corporations might have to the status of an American citizen in matters of litigation before the United States Consular Courts of China and before the United States Court for China.

As to the first point, the American Secretary said that no citizen had an absolute and inherent right enforceable in the courts to the protection or the intervention of his Government and that, therefore, the Department of State might make such rules and regulations as it might see fit with regard to the status of American corporations in foreign countries and the intervention in their behalf by the American Government. However, in framing such rules it might be found to be to the advantage of the United States fully to recognize and protect in China all corporations organized under American law irrespective of the question as to whether the stockholders or a majority of them were or were not citizens of the United States.

As to the second point, it appears, as a legal proposition, that all corporations possessing an American charter are citizens of the United States and therefore subject to be sued only in the American courts in China—and this without regard to the nationality of the stockholders. This holding would apply to companies organized under the laws of the Philippine Islands or other insular possessions of the United States.

The communication goes on to say that though all American chartered corporations are entitled to registra-

tion at the American consulates, such registration does not carry with it the implication that the United States Government will in all cases extend to it its diplomatic protection or intervention. This would have to be determined, in each case, as a matter of policy and right, all the attendant circumstances being taken into consideration.

Foreign Shareholders in Chinese Corporations. The Chinese law of 1904, relating to corporations, says: "Should foreigners make application for shares in a company established by Chinese they must agree to observe the Chinese Commercial Laws as well as the Regulations of the company."

The Chinese Mining Law of 1914, Article 4, says:

"Any subject of a foreign country which has concluded treaties with the Republic of China may co-operate with citizens of the Republic of China in securing the right to mining enterprises provided that he is willing to observe this law and other laws relating to the subject. But the shares taken by a foreigner shall not exceed one-half of the whole number."

The American Government in practice has not been disposed to grant special protection to its nationals investing in the shares of Chinese companies—not even when they own the majority of such shares and there appears to be official action on the part of the Chinese discriminating against the companies concerned. In all cases, however, actual or vested property rights of Americans will be protected.

It may be observed that neither of the Chinese laws above referred to have been accepted by the Treaty

Powers as applicable to their respective nationals. This is of no great significance as regards the law of corporations, but is important as regards the mining laws of China, since China has, by treaties, undertaken to enact suitable laws which make provision for mining development with the assistance of foreign capital. And, with reference to this matter of mining it is worthy of note that when foreign capital has been invested in Chinese corporations for mining or other purposes, a frequent practice has been to embody in contracts to which the Ministry of Agriculture and Commerce is a party the essential terms of operations of the corporation. These contracts thus form, as it were, special charters for the corporations.

The right of nationals of the Treaty Powers to hold stock in Chinese corporations is secured in the Anglo-Chinese Treaty of 1902, and the Sino-Japanese Treaty of 1903. Overruling the Viceroy of Kiangsu Province, the Chinese Board of Agriculture, Works and Commerce held, in 1906, that this right applied to Chinese companies outside of, as well as within the Treaty Ports.

The Chinese law recognizes the corporation as an entity, and, therefore, when a Chinese corporation is sued, the jurisdiction is in the Chinese courts. When it appears as plaintiff, the jurisdiction is in the foreign consular courts, but the Chinese law of corporations is often applied; not, however, in the sense that the foreign law is wholly replaced, but that, in some matters, there has been an implied contract to observe the Chinese law.

Article IV of the Anglo-Chinese Treaty of 1902 provides as follows:

Whereas questions have arisen in the past concerning the right of Chinese subjects to invest money in non-Chinese enterprises and companies, and whereas it is a matter of common knowledge that large sums of Chinese capital are so invested, China hereby agrees to recognize the legality of all such investments past, present, and future.

It being, moreover, of the utmost importance that all share-holders in a joint-stock company should stand on a footing of perfect equality as far as mutual obligations are concerned, China further agrees that Chinese subjects who have or may become share-holders in any British joint-stock company shall be held to have accepted, by the very act of becoming share-holders, the charter of incorporation or memorandum and articles of association of such company and regulations framed thereunder as interpreted by British courts, and that Chinese courts shall enforce compliance therewith by such Chinese share-holders, if a suit to that effect be entered, provided always that their liability shall not be other or greater than that of British share-holders in the same company.

Similarly the British Government agree that British subjects investing in Chinese companies shall be under the same obligation.[12]

Taxation of Corporations. The Chinese Government does not tax corporations as such, but, by Article IV of the Sino-American Treaty of 1903 has reserved the right to levy a tax on foreign corporations doing business in China.[13] China imposes no income tax either on individuals or on corporations. However, outside of Treaty Ports, if foreign corporations maintain any establishments, a kind of tax or royalty, termed "pao-hao" is levied.

[12] MacMurray, No. 1902/7. See Borchard, *The Diplomatic Protection of Citizens Abroad*, 277-282 as to the international status of corporations chartered by one State in which a considerable portion of the financial interest is in citizens of other States.

[13] MacMurray, 1903/5. This saving clause is as follows: "Nothing in this Article is intended to interfere with the inherent right of China to levy such other taxes as are not in conflict with its provisions."

Proposed American Law. At the present time there is pending in the American Congress a Bill to authorize the granting of charters by the National Government of the United States to companies desiring to carry on any lawful business exclusively in countries outside of the United States or in which the United States exercises extraterritorial jurisdiction. This law, though general in its application, is designed to meet especially the needs which American merchants and investors in China have felt. In fact the Bill was prepared by the American Chamber of Commerce in China.[14]

Upon this point may be quoted the following from Arnold's *Commercial Handbook of China.*[15]

"Under present American laws there is no machinery for incorporating companies for the special purpose of foreign trade, and companies organized for this special purpose are compelled to incorporate under the laws of the various States [of the American Union], with their varying and often conflicting regulations. To quote the comment of one of the most widely circulated American periodicals, 'the Chinese do not know anything in particular about New Jersey, Delaware, New York, and so on. Their lawyers tell them that the United States has nothing in particular to do with these corporations, that they are the creatures of the various States; that the provisions of a given charter may be lawful in one State and unlawful in another. The Chinese . . . turn to a

[14] In coöperation with Hon. Charles Denby of the United States War Trade Board, who conducted for the Government a special investigation of trade conditions in China.

[15] Volume Two. This work was prepared for the Bureau of Foreign and Domestic Commerce of the Department of Commerce of the United States, and published in 1920 at the Government Printing Office.

company whose charter bears the seal of a great nation."[16]

Revised Regulations of 1919 Affecting the British Companies Act. These new regulations adopted on October 9, 1919, provide that:

1. No person other than a British subject resident within the limits of this Order, shall act as managing director or in any position similar to that of managing director, or shall otherwise exercise general or substantial control of the business of a China Company.

2. If default is made in compliance with this article the Company shall be liable to a fine not exceeding $50 for every day during which the default continues, and every director and every manager of the Company who knowingly authorizes or permits the default shall be liable to the like penalty.

3. Failure to comply with the provisions of this article shall be a ground upon which an order for winding up the Company may be made by the Court.

4. This article shall come into force sixty days after the publication of this order.

Millard's Review (January 3, 1920) after quoting this text has the following editorial comment which is worthy of reproduction:

[16] As has been said above, very many of the corporations operating in China have obtained their charters under the Hongkong Companies Ordinance. In many cases the capital invested is mainly Chinese or of other nations. "As a matter of fact," says the *New York Journal of Commerce* (quoted by Arnold) "Americans who wish to invite the capital of Chinese and other nationalities are compelled to resort to the laws of England to do their business in a corporate capacity in China. They thus submit themselves to English jurisdiction and become in their corporate capacity, British subjects, under the control of Britsh courts and consular authorities. Their business, moreover, figures as an asset of Great Britain in the communities in which they may be established."

It is well known that in the past a number of companies having a merely nominal, if indeed any British interest, were registered under the Hongkong Ordinances. From time to time the inconvenience of this was shown by the fact that while the British Court had jurisdiction over the company as such, it had none over its personnel, as in some cases where there were no British directors. Subsequently, when local registration of China Companies was permitted, it was enacted that the majority of the directors should be British, but this did not always meet the case in the least, as it was always possible to put in figureheads as directors, who had actually no control and little real interest. The present legislation makes it certain that in British companies, real British interests and control will predominate.

The Chief companies in Shanghai containing an American interest that are affected by this act are in the following lines; life insurance, real-estate, hotels, shipping, manufacturing and lumber. Although their number is not large, their business in China is extensive, in some cases the most extensive in China. In addition to companies having an American interest there are hundreds of Chinese companies that are affected, among them being large department stores, some banks, and other lines. From the standpoint of the Chinese companies it will be comparatively simple to comply with the law. They will either re-incorporate as purely Chinese corporations under the Ministry of Agriculture and Commerce at Peking, or will install a Chinese of British nationality as managing director. There are hundreds of Chinese business men who are British subjects through residence in Hongkong and it will not be difficult to find willing subjects to accept new positions created by this law. It is believed in many quarters that the British government had these Chinese Companies in mind when the enactment was passed. There Chinese firms are scattered all over the country and the problem of protecting them has been a difficult one for the British government. This has been especially true in the last few years because of the political troubles in China. Furthermore the very act of protecting these firms has caused the British government no little embarrassment, for the firms are practically all of pure Chinese capital and management. An example in hand is the present Chinese boycott against Japanese goods.

It appears that the American Chamber of Commerce of China and the American Association of China protested against these new British regulations as anti-American in purpose. In the light of what has been said, however, the editor of *Millard's Weekly* is of opinion that this interpretation is a false one—that there were good and sufficient grounds for the legislation and that in enacting it the British government had no special nationality in view.

CHAPTER VI

Landholding by Foreigners in China

The rights of foreigners to lease or acquire title to land in China have incidentally been set forth in the treaty provisions which have been elsewhere quoted in connection with the larger subjects of extraterritoriality and the rights of commerce and trade. It will be worth while, however, even at the risk of some repetition, to consider this subject specifically, although briefly.

The special rights possessed or enjoyed by missionaries with respect to land holding will receive consideration in a later section of this chapter.

Landholding in the foreign "settlements" or "concessions" will receive consideration in the section dealing with the legal status and administration of those areas.

By Article XII of the American Treaty of 1858 it was provided that:

> Citizens of the United States, residing or sojourning at any of the ports open to foreign commerce, shall be permitted to rent houses and places of business, or hire sites on which they can themselves build houses or hospitals, churches and cemeteries. The parties interested can fix the rent by mutual and equitable agreement; the proprietors shall not demand an exorbitant price, nor shall the local authorities interfere, unless there be some objections offered on the part of the inhabitants respecting the place. The legal fees to the officers for applying their seal shall be paid. The citizens of the United States shall not unreasonably insist on particular spots, but each party shall conduct with justice and modera-

tion. Any desecration of the cemeteries by natives of China shall be severely punished according to law.

By Article XII of the Sino-British Treaty of 1858 it was provided that:

British subjects, whether at the Ports *or at other places,* desiring to build or open houses, warehouses, churches, hospitals or burial grounds, shall make their agreement for land or buildings they require at the rates prevailing among the people, equitably and without exaction on either side.

The italicized words " or at other places " the British have construed as meaning only places near the open ports.

At times some trouble has arisen by reason of the resistance of local authorities to the acquiring of lands by foreigners, missionaries and others, at places where they have had, under treaty, the right to acquire lands. In general it has been recognized by foreigners, and especially by the missionaries, that deference should be paid to local objections that have any reasonable basis. At times the Chinese authorities have argued that the objection of a single person in a community furnished adequate grounds for refusing permission to a foreigner to acquire land and to build thereupon. This position has been deemed an unreasonable one and as working a virtual nullification of the treaty right.[1]

[1] See, for example, *U. S. For. Rels.*, 1893, pp. 230-231. In this case the Chinese Bureau of Foreign Affairs at Nanking had served notice upon the American Consul that 'henceforth, when missionaries or other citizens of the United States desire to acquire land or houses, no matter where, they must first meet the gentry and elders of the place and agree with them and then report to the Bureau and local officials for an official survey of the ground. On its being found that the *feng shui* (geomantic requirement) of the neighborhood is not prejudiced, the execution of the convey-

In 1911 the American Chargé wrote to the Consul-General at Tientsin that, in his opinion, foreigners might legally lease lands in the immediate vicinity of Tientsin or of other open ports, even though such lands were outside the bounds of the foreign "Concessions," provided the Chinese local authorities gave their permission and were willing to register the deeds. Attention was called to the fact that in this respect, the provisions of the Sino-American Treaty of 1903 were not as liberal as those of the treaties with Great Britain, which do not specifically restrict the leasing of lands by Britishers to places set apart in the ports for use and occupation by foreigners; but that, of course, under the most favored nation principle, Americans were entitled to the same rights as those granted to the subjects of Great Britain. It was declared that the practice was general upon the part of the Chinese, to permit the leasing of lands outside the "Concessions." This holding of the legation having been submitted to the authorities at Washington, the following ruling was issued: "Where the acquisition of land by foreigners outside of the several treaty ports is a matter

ance will be ordered, and the official tax receipt and title deed will be sealed and forwarded through this Bureau to your consulate for delivery." To this the American minister objected, declaring, as he wrote to his government at Washington: "This clause introduces a new element in the mode of acquiring land. Article XII of the Treaty of 1858 does not require that citizens of the United States desiring to purchase land shall submit the question to the decision of the gentry and elders. . . . The clause above quoted from the communication of the Taotai is so distinctly antagonistic to the above quoted article of the treaty that I have directed Mr. Charles to notify the Taotai that it will not be acquiesced in or acted on by this legation."

With regard to unreasonable difficulties placed by the Chinese in the way of the sale or transfer of real estate owned by foreigners, see also *U. S. For. Rels.*, 1889, p. 72.

of permission and usage, fortified by long observance and generally claimed for and conceded to the citizens or subjects of other nations, this Government would be also disposed to hold that deeds for such lands presented by American citizens might properly be registered at the respective consulates."[2]

Modes of Acquiring Titles. The formalities and modes of acquiring titles to real estate by foreigners were considered in a letter of American Minister Denby in reply to a series of questions that had been propounded to him by the Treasurer of the Central China Mission.[3]

From this letter we quote the following:

British consuls issue title deeds only for land situated within the limits of British Concessions. All title deeds to property situated outside of these concessions are issued by the Chinese authorities. The consuls of the United States have no authority to issue title deeds to real estate in China. Printed forms of deeds with an English translation, such as are issued by the Taotai at Shanghai, are obtained at the consulate-general, but they are only available for property within the jurisdiction of the said Taotai. . . .

The twelfth article of the treaty of 1858 provides certain conditions which may be held to be conditions precedent to the acquisitions of land. Among them is this: That the legal fees to the officers for applying their seals shall be paid. In the United States a deed would be good *inter partes,* at least by estoppel, without acknowledgment witnessed by a notarial seal. . . . Whether, under certain circumstances, a court might hold that title passed without the deed being sealed and stamped by the Chinese authorities I cannot undertake to say. But it may be said with positiveness, . . . that the want of a seal would create difficulty and confusion. *Prima*

[2] *U. S. For. Rels.*, 1911, pp. 82-83.
[3] *U. S. For. Rels.*, 1888, Pt. I, p. 272.

facie, there is no consummated legal transfer until the seal has been affixed. . . .

The practice at Shanghai is for the Taotai to stamp all deeds. In addition a note is made on the deed over the consul-general's signature and seal.

I believe that the rule in China is, when a native offers to sell his land he must produce the original or old title deeds. These are examined and compared with the record of titles in the magistrate's office before the sale can be made.

When land is mortgaged an indorsement setting out the mortgage is generally made on the deeds, and the deeds are then handed to the mortgagee to be held by him as security for his lien. . . .

At Shanghai an indorsement of the transfer (of lands) is made on the title deeds in Chinese and English, and is duly stamped by the Taotai. A record of the transfer is kept in the register of land transfers. Three copies of the deed are made: one is retained by the Taotai, one given to the vendee, and one is filed by the consul-general.

Landholding in Manchuria. In South Manchuria the rights of foreigners with regard to acquiring interests in land are broader territorially, that is, outside of the Treaty Ports, than they are in other portions of China. This is due to the Sino-Japanese treaty of 1915, the pertinent provision of which reads as follows:

Japanese subjects in South Manchuria may, by negotiation, lease land necessary for erecting suitable buildings for trade and manufacture or for prosecuting agricultural enterprises.

Japanese subjects shall be free to reside and travel in South Manchuria and to engage in business and manufacture of any kind whatsoever.

These rights, by the favored nation principle have, of course, become available to the nationals of all the other Treaty Powers.

Missionaries in China. The treaty privileges of missionaries in China are broader in some respects than those of other persons and they therefore deserve special description.

The questions which have arisen between China and the Treaty Powers with regard to missionaries have, in the main, centered around the following points: (1) their freedom to teach; (2) their right to reside and work in the "interior," that is, away from the Treaty Ports; and (3) the status of native converts to Christianity.

Although missionary work in China dates from a much earlier period, the first treaty mention of it is in the British and American treaties of 1858. In the American treaty of that year Article XXIX declared:

> The principles of the Christian religion, as professed by the Protestant and Roman Catholic Churches, are recognized as teaching men to do good, and to do to others as they would have others do to them. Hereafter, those who quietly profess and teach these doctrines shall not be harassed or persecuted on account of their faith. Any persons, whether citizens of the United States or Chinese converts, who according to these tenets teach and practice the principles of Christianity, shall in no case be interfered with or molested.

The corresponding provision in the British treaty is in substantially the same words.

In 1860 an imperial edict was issued commanding local officials throughout the empire "in every case affecting Christians [4] to investigate thoroughly and decide justly."

In 1862 a more comprehensive order, accompanied by explanations, was issued by Prince Kung, the chief minister for foreign affairs in which he gave instructions that though Christians [converts] were, in general, to

[4] In this case the reference was to Roman Catholics.

pay the same taxes as non-Christians, they were not to be compelled to contribute for the building and repair of temples, for idol processions, and plays, etc.

In the Burlingame treaty of 1868 with the United States, Article IV provided:

> The twenty-ninth article of the treaty of the eighteenth of June, 1858, having stipulated for the exemption of Christian citizens of the United States and Chinese converts from persecutions in China on account of their faith, it is further agreed that citizens of the United States in China of every religious persuasion, and Chinese subjects in the United States shall enjoy entire liberty of conscience, and shall be exempt from all disability or persecution on account of their religious faith or worship in either country. Cemeteries for sepulture of the dead, of whatever nativity or nationality, shall be held in respect and free from disturbance or profanation.

The right generally of foreigners, to lease or acquire title to lands and buildings in China, has been treated in the preceding section, and it here remains to discuss only the special and additional rights which missionaries possess or have been permitted to enjoy in China with reference to real estate.

In the Chinese version of the French treaty of 1860 are to be found the words "and it shall be lawful for French missionaries in any of the provinces to lease or buy land and build houses." But these words are not found in the French text, and, as it is expressly stipulated that the French text shall be the authoritative one, no claims have ever been founded upon the words in question.[5]

[5] The Chinese claim that the words were surreptitiously introduced into the Chinese text. Just how they came to have a place there has never been determined.

Missionaries in the Interior. Despite the absence of express treaty permission, Christian missionaries of all nationalities have been permitted by the Chinese authorities to establish themselves in many places throughout the Empire far from treaty ports and there to acquire lands and construct buildings for use as residences, hospitals, schools, churches, etc. Thus not only have vested property rights been created, but the question has been raised whether there has not been created a custom which may be appealed to under the most favored nation clause when permission is sought of the Chinese authorities to establish a new station.

Upon this point we can do no better than to quote the view of American Minister Denby.[6] Writing in 1888, he says:

> Leaving the treaties out of consideration, what, then, is a fair conclusion from the actual condition of things in China?
>
> It would seem to be this: The Imperial Government leaves the question of permanent residence to be solved by the local authorities and the people. If the foreigner can procure toleration in any locality, and is suffered without objection to locate therein, he, by degrees, may acquire vested rights, which his own government and the Imperial Government also are bound to secure to him if attacked. If the foreigner is unable by tact and prudence to conciliate the natives so as to secure a permanent residence, he is not strictly entitled to demand either of his own government or the Imperial Government insistence on a claim which has no treaty basis.
>
> It is claimed, however, that the rights granted under the treaties have been enlarged by the usage and tolerance of the Chinese Government, and by special acts, whereby peculiar rights and privileges in certain localities have inured to certain foreigners, and under the favored nation clause, similar rights will be claimed for citizens of the United States.

[6] *U. S. For. Rels.*, 1888, Pt. I, p. 271.

The Government of the United States does not undertake to control its citizens in their selection of residences at home or abroad. They have the right to go where they please. They will, while traveling in foreign countries, be protected by the Government.

Should citizens of the United States locate in the interior of China, the Government of the United States could not, as a matter of treaty stipulation, insist that they have the right to acquire real property, except in localities where this right has been accorded to citizens or subjects of other foreign powers. In this last case, under the favored nation clause, exact equality should be insisted upon. . . .

It follows from what has been written that the citizens of the United States who undertake to settle in the interior must understand that they do so without positive treaty sanction. While governmental protection as to their persons would follow them the world over, the Government does not hold itself bound to assist them in the prosecution of any business or employment whose exercise in the given locality contravenes the usages or laws of China.

Treaty of 1903. At last, in 1903, in the Sino-American treaty of that year, an express treaty right was granted, not to individuals, but to " Missionary societies " to rent or lease in perpetuity lands and buildings for their missionary purposes in all parts of the Empire. Article XIV of that treaty, after repeating substantially the provision of Article XXIX of the Treaty of 1858, provides:

No restrictions shall be placed on Chinese joining Christian churches. Converts and non-converts, being Chinese subjects, shall alike conform to the laws of China, and shall pay due respect to those in authority, living together in peace and amity; and the fact of being converts shall not protect them from the consequences of any offence they may have committed before or may commit after their admission into the church, or exempt them from paying legal taxes levied on Chinese subjects generally, except taxes levied and contributions for the support of religious customs and practices contrary to their faith. Missionaries shall not interfere with the

exercise by the native authorities of their jurisdiction over Chinese subjects; nor shall the native authorities make any distinction between converts and non-converts, but shall administer the laws without partiality so that both classes can live together in peace.

Missionary societies of the United States shall be permitted to rent and lease in perpetuity, as the property of such societies, buildings or lands in all parts of the Empire for missionary purposes, and, after the title deeds have been found in order and duly stamped by the local authorities to erect such suitable buildings as may be required for carrying on their good work.

"The new stipulations," says Hinckley, "cover the principal missionary difficulties that have arisen since 1850. . . . It will be observed that the right of missionaries to reside in the interior is not included in this treaty. The omission may be ascribed to the fact that the privilege has long existed, the only restrictions upon it being made by the authorities in remote communities where friendliness may not yet have been manifested."[7] It may further be observed that the right regarding landholding is to lease in perpetuity and not to acquire a full title.

It would appear that in 1865 the French had obtained from China a treaty which granted to French missionaries the right to purchase land and reside anywhere in the interior, the deeds to lands to be in the name of missionary societies or churches. The text of this treaty has, however, never been officially published. It has nevertheless been referred to in official diplomatic correspondence between the French minister at Peking and his government.[8] When, in 1897 the American Minister

[7] *American Consular Jurisdiction in the Orient*, p. 120.

[8] See *Archives Diplomatiques*, Vol. LXVI, p. 305. Cf. article by L. N. Richards, "The Rights of Foreigners to Reside and Hold Land in China,"

asked that an imperial decree be issued recognizing the right of American missionaries to acquire land and reside in the interior, the Chinese Government replied that as to the right to reside this was already provided for by treaty and that decrees to that effect had been issued; and that as to obtaining title to lands, " while the treaties between the United States and China do not provide for this, still the American missionaries shall be treated in this matter the same as French missionaries."[9]

The directions sent by the Chinese Foreign Office to the Viceroys and Governors of all the Provinces, in October, 1894, read as follows:

" Hereafter, if French missionaries go to the interior of the country to purchase land and dwellings, the seller (insert the name) shall specify in the drawing-up of the deed of sale that his property was sold to become part of the collective property of the Catholic mission of the place. It will be unnecessary to record the names of the missionary or of the Christians. The Catholic mission, after the execution of the deed, will pay the registration fee assessed by the law of China on the deeds of sale and at the same rate. The seller will not be bound to give notice to the local authorities of his intention to sell or to apply for a previous permit."

With reference to the phrase " the collective property of the Catholic mission," as used above, it is of interest to observe that the Chinese have sought to have the doctrine established that the title to the lands sold becomes vested in the collectivity of the Chinese converts, rather than in the legal entity of the foreign mission.

Harvard Law Review, Vol. xv (1901-02), pp. 191-207. This French agreement is sometimes termed the Berthemy Convention.

[9] *U. S. For. Rels.*, 1897, p. 62.

A very general custom among missionaries in the interior has been to take the legal title to lands in the name of Chinese converts who hold them in trust for the missionary society. As regards the legality as well as the expediency of this custom the American Minister in 1888 wrote:

"The subject of trusts is one of the most difficult. In China it seems to be usual with foreigners, in the interior at least, to have property conveyed to a trustee who executes, as a precaution, a declaration of trust to the *cestui qui trust,* which is not recorded. The plan is probably legal. But the better plan would, in my opinion, be to have the deed made to the head of the mission in trust for his society, or to the society direct."[10]

Status of Chinese Converts to Christianity. The legal status of Chinese converts to Christianity is a very simple one though it has, in practice, given rise to a great deal of controversy owing to attempts made by the converts to obtain for themselves special protection or immunity from local law and authorities, and, at times, to a similar effort in their behalf upon the part of the foreign missionaries.

As a matter of treaty provision and of Chinese law, a convert to Christianity has no extraterritorial rights whatsoever. He has exactly the same status and rights as his unconverted fellow nationals.[11] He is, however,

[10] *U. S. For. Rels.*, 1888, 274. Quoted by L. N. Richards in his article, "The Rights of Foreigners to Reside and Hold Land in China," *Harvard Law Review*, Vol. xv (1901-02), pp. 191-207.

[11] By Article V of the German treaty of 1861 it is provided that:

"Die Bekenner und Lehrer der christlichen Religion sollen in China

guaranteed immunity from discrimination or oppression by the Chinese authorities on account of his religion. And yet, as an almost unavoidable result of human nature, the missionaries have been led to interpose in behalf of their converts. Morse puts this very well when he says:

With the reservation of the case of persecution most missionaries, certainly most Protestant missionaries, generally accept this position; but they cannot always be trusted to temper zeal with discretion and to distinguish what is right from what is lawful. In this lies an element of danger to the missionary and to his cause. . . . When the missionary, many miles from the observing eyes of his Consul, transfers a corner of his protecting cloak to his poor Chinese convert, he may be doing what is right, but it is not lawful; and this is the naked fact underlying many an episode leading to a riot. You cannot eradicate from a missionary's mind the belief that a convert is entitled to justice of a quality superior to that doled out to his unconverted brother; it could not be got out of your mind, or out of mine in a similar case. None of us could endure that a protegé of ours should be haled away to a filthy prison for a debt he did not owe, and kept there until he had satisfied, not perhaps the fictitious creditor, but at least his custodians who were responsible for his safe keeping. The case is particularly hard when the claim is not for a debt, but for a contribution to the upkeep of the village temple—the throne of heathendom—or of the recurring friendly village feasts held in connection with the temple —counterparts of Feast Day and Thanksgiving; and when conversion drives its subject to break off all his family ties by refusing to contribute to the maintenance of family ancestral worship and the ancestral shrine, the hardship is felt on all sides—by the missionary who cannot decline to support his weaker brother in his

volle Sicherheit für ihre Personen, ihr Eigenthum und die Ausübung ihrer Religions-Gebräuche geniessen."

Morse, however, points out, that this very broad language was not intended to remove, and has not been construed as removing, converts from the jurisdiction of their own laws and courts. *Trade and Administration of China*, p. 197.

struggle against the snares of the devil; by the convert, who is divided between his allegiance to his new faith and the old beliefs which made all that was holy in his former life; by the family, who not only regard their recreant member as an apostate but are also compelled to maintain the old worship with reduced assessments from reduced members; and by the people and governors of the land, who may find in such a situation a spark to initiate a great conflagration. . . .

. . . There are, however, two sides to this question. There are numerous cases, susceptible of proof to the man on the spot but of which it would be difficult to carry conviction to the minds of those at a distance, where the missionary undoubtedly intervenes to make capital for his mission and to secure for his followers some tangible advantage from their acceptance of his propaganda. At the other extremity there is the manifest tendency, clearly recognized by all, even the most impartial, but quite incapable of legal demonstration, for the judges of the land in cases where the right is not obviously on one side or the other, to decide *ex motu sua* against the convert; ostensibly such decisions are given on as good legal grounds as any case in China is ever decided, but practically the underlying reason is the convert's religion—not the judge's antipathy to the religion itself, but his ingrained feeling that the convert has become less Chinese than the non-convert.[12]

Secular Work by Missionaries. At times the question has been raised as to the right of missionaries to engage

[12] *Trade and Administration of China*, p. 198. In an Appendix (c) Morse gives the text of a circular which the British Minister at Peking found it necessary to issue in 1903 calling missionaries' attention to the fact that it was improper for them to address Chinese officials, either verbally or in writing, in behalf of their converts, and that, if representations were needed, the matter should be brought before the nearest consul through whom, if deemed proper, representations might be made to the Chinese authorities. "The fact that a missionary or the convert on whose behalf a complaint is made resides at a distance from one of H. M. Consuls is not sufficient reason for the missionary taking upon himself the duty of the consul, and his intervention could only be justified when there was imminent danger of an extreme character threatening the safety of converts."

in secular occupations incidentally connected with their religious work. As to the rights here involved we may quote from the letter of American Minister Denby of February 3, 1897. Writing to the Secretary of State, he said:

> Under the Berthemy convention the right to reside in the interior and to buy land for residential purposes was secured to missionaries. In no convention or treaty is anything said about the right to carry on by foreigners residing there any regular employment in the interior. In practice, however, it is a common thing for missionaries all over China to engage in many species of employments which are considered as aids or adjuncts to their religious and charitable work. They have printing establishments, book-binderies, industrial schools, workshops, stores, dispensaries. They are doctors, colporteurs, newspaper correspondents; one of them living here lodges and boards strangers. All kinds of furniture is manufactured here and publicly sold by missionaries. Washing and sewing are done by the Catholic missionaries. In fact, there is complete tolerance of all kinds of work. It is understood, of course, that the profits of these various enterprises go to the general fund of the mission, and are used to promote religious purposes. In answering Mr. Simpson (who had made inquiry) I have not been able to draw the line between pursuits thus permitted and agriculture, stock raising, or trading. Of course, much would depend on the manner that such pursuits were carried on. The question of the right to engage in trade or commerce seems to depend entirely on tolerance. If the particular enterprise engaged in in any locality is not prohibited by the officials and is allowed to be prosecuted without objection, it would finally be sanctioned by usage, and might be entitled to protection of the Treaty Powers.[18]

In 1911 the Chinese foreign office, in consultation with the Legations at Peking, promulgated a new set of rules

[18] *U. S. For. Rels.*, 1897, p. 105.

governing the holding of property by foreigners in the interior, which rules Dr. Koo summarizes as follows:

"(1) That property owners shall be free to sell their property and the missions desiring to buy shall not coerce them to sell; (2) that the missions shall, before purchasing any property consult the local officials and request them to make an official survey of the ground and ascertain the records; (3) that after the purchase is made, they shall apply to the authorities for a tax-deed; (4) that the property purchased shall always remain the property of the mission, and a tablet shall be erected to record its ownership; (5) that if the mission, after purchasing a property should sell it to Chinese, they are prohibited clandestinely to sell it to foreigners; (6) that the local authorities shall forbid the purchase of property in all cases where the property is purchased in the name of a mission, but not to be used for the purposes of the mission, or where it is to be used for foreign merchants for trading purposes." [14]

---

[14] *Status of Aliens in China*, p. 333. Dr. Koo, for the text of the rules themselves, refers to the Shanghai *Eastern Times*, of April 19, 1911.

CHAPTER VII

Concessions and Settlements

It has already appeared that the rights of foreigners to carry on trade and other pursuits, to hold land, etc., may be exercised, except by missionaries, only in the Open Ports.[1] It has also been seen that within a number of these ports it has been provided by treaty that certain areas should be delimited for these purposes. These areas have come to be known as "Concessions" or "Settlements."

Foreign Residential Areas, Settlements, and Concessions Defined. These terms, though often used as synonymous need to be distinguished. Accurately stated, the generic term or phrase is "Areas Set Apart for Foreign Residence," or "Foreign Residential Areas"; which areas include, as distinct types, "Concessions" and "Settlements." But these specific terms are each of them very commonly used in a generic sense as including all the types of urban areas set apart by the Chinese authorities for residence by foreigners. As will later appear, the International Settlement at Shanghai is usually taken as typical of the foreign residential areas properly denominated Settlements. There the area is

[1] The situation in Manchuria under the Sino-Japanese Treaty of 1915 has already been noted. The term "Open Ports," rather than "Treaty Ports" is here employed since a number of the ports have been opened by China to foreign trade not as a result of treaty obligation, but *suo motu*.

delimited by boundary lines, but the land within these limits remains upon the registers of the Chinese land office, and the Chinese are not disturbed in the possession and occupation of any property that they may have in the area. Foreigners are not permitted to acquire fee simple titles to lands within the Settlement, but may obtain perpetual leases.

The foreign residential areas at Hankow are typical of the areas properly termed "Concessions."[2] There the entire areas are severally leased to the foreign Powers concerned and an annual land tax is paid by those Powers to the Chinese Government. Previously to these leases the lands within the concessions are obtained from their private owners by expropriation or voluntary sales. Foreigners obtain titles to particular pieces of land from the foreign Power concerned through its consular authority. The deed is issued by the consular official of that Power and is usually taken by the foreigner to the consulate of his own nationality for registration. This registration, however, as in the case of the International Settlement at Shanghai, is simply a matter of record in case the deed is lost or there is a dispute as to its existence or terms.

In ports in which foreign residential areas have been voluntarily opened by the Chinese, foreigners are permitted to obtain leases for a period not longer than thirty years of lands for residential and business purposes. The Government of China has taken the ground, though not without some demur upon the part of the Treaty Powers,

[2] The term "Concession" is also used in a wholly different sense as the name of a grant made by the Chinese Government to particular parties for the construction of a railway and other public work.

that in ports opened to foreign trade by Chinese Government decree rather than by treaty, the whole area of the city should be deemed opened to foreign business and residence.

Land Transfers and Ownership in Concessions and Settlements. In Shanghai, a foreigner desiring to purchase land obtains from the original Chinese owner the old Chinese title deeds and tax receipts. These he takes to his Consulate and through that office makes application to the Chinese authorities for a new title deed in his own name. When the new deed has been issued, bearing the stamp of the Chinese official in charge of the land registers, the old deeds are cancelled. Three copies of the new deed are issued, all duly stamped, one remaining in the records of the Chinese land office, one in the records of the Consulate, and the third retained by the new owner of the land. In this procedure the important element is that all of the records are Chinese records, and that evidence of the title reposes in the seal of the Chinese magistrate or land officer. The foreign consular record means nothing except in case the foreign owner loses his deed.

In the Concessions Chinese are not supposed to hold lands. In fact, however, they do so by borrowing (usually for a financial consideration) the names of foreigners. This practice also exists in the International Settlement at Shanghai.[3] There, however, a great deal of land is held directly by the Chinese, the original titles never having been transferred to foreign ownership.

[3] Certain foreign lawyers and other individuals in Shanghai conduct a profitable business by charging Chinese a fee of twenty-five dollars for registering their lands in foreigners' names.

The reasons leading Chinese to desire to get the titles to their lands in the names of foreigners, while reserving to themselves the beneficial interests therein, have been the following. (1) In case of family litigation or clan levies the Chinese can make it appear that the lands are in foreign hands and therefore exempt from assessment. (2) By obtaining registration under a foreign name an accurate survey and delimitation of boundaries of the lands concerned is secured. This has become a very important matter in Shanghai where land has become quite valuable and is sometimes sold by the foot. The old Chinese evidences of title exhibit no exact boundary lines, and even as muniments of title are by no means satisfactory. During the Taiping rebellion all of the magistrates' records were destroyed and were replaced by certificates issued by the new authorities which, on their face, simply indicated that the holder held title to so many mou of land. Many of these certificates were counterfeited so that a landholder could not be sure that the certificate which he held was genuine. The surveys following foreign registration settle once for all both boundaries and titles.

China's Sovereignty not Surrendered. In no cases are these concessions or settlements taken from the sovereignty of China. The foreigners living within them are entitled to only those extraterritorial rights and privileges to which they are entitled anywhere else in China, and the Chinese living within these areas are likewise in no way removed from the jurisdiction of the native courts or other Chinese governmental organs.[4] Thus,

[4] As an exception to this statement see *ante*, p. 55 as to the status

within the settlements or concessions we find functioning practically the same judicial tribunals that function outside of them, the foreign consuls taking jurisdiction in cases in which their nationals are defendants, and the Chinese native courts taking charge when Chinese are defendants. So also foreigners holding real estate in those areas pay the ordinary land tax to the Chinese Government.

In corroboration of the statement that settlements and concessions remain under Chinese political sovereignty, we may quote Article I of the Sino-American Treaty of 1858, which reads as follows:

> His Majesty the Emperor of China being of opinion that in making concessions to the citizens or subjects of foreign powers of the privilege of residing on certain tracts of land or resorting to certain waters of that empire for purposes of trade, he has by no means relinquished his right of eminent domain or dominion over the said lands and waters hereby agrees . . . It is further agreed that if any right or interest in any tract of land in China has been or shall hereafter be granted by the Government of China to the United States or their citizens for purposes of trade or commerce, that grant shall in no event be construed to divest the Chinese authorities of their right of jurisdiction over persons and property within said tract of land, except so far as that right may have been expressly relinquished by treaty.

As a typical treaty provision defining the rights of foreigners in the Treaty Ports we may quote the following from Article III of the Sino-American agreement of 1903.

> Citizens of the United States may frequent, reside, carry on trade, industries and manufactures, or pursue any lawful avocation,

of Chinese within the settlements at Shanghai. This, however, is an exception of practice rather than of strict treaty or legal right.

in all the ports or localities of China which are now open or may hereafter be opened to foreign residence and trade; and, within the suitable localities at those places which have been or may be set apart for the use and occupation of foreigners, they may rent or purchase houses, places of business, and other buildings, and rent or lease in perpetuity land and build thereon.

It is not to be understood that foreigners are permitted to reside only within the limits of the concessions or settlements as fixed by treaties or other understandings with the Chinese Government; upon the contrary, the entire areas of the Treaty Ports are open to them for residence, and this right is very largely made use of. Reciprocally, many Chinese are found residing within the concessions. As to their right thus to do, we find the American Secretary of State writing, on November 30, 1908, to the American Minister at Peking, as follows:

Since this government has asserted that American citizens are entitled to reside and hold land, not only within the settlements which have been delimited at certain open cities in China, but within these cities themselves, the Department considers that the exclusion of Chinese from these international settlements at treaty ports would be unwarranted, and would go far to justify the Chinese in their contention, which we have never accepted, that Americans and other foreigners are not entitled under the treaties to reside within the so-called native cities, but should be confined within the limits of their concessions.[5]

Governing Powers in Concessions. The significance of a concession or settlement at a Treaty Port, then, comes down to this: that permission is given by the Chinese Government to the foreigners concerned, to set up and maintain local governmental, or, more exactly, local ad-

[5] *U. S. For. Rels.*, 1908, p. 123.

ministrative agencies for police purposes, sanitation, making of roads, building regulations, etc. The administrative organs, created for carrying out these public purposes, levy taxes, the proceeds of which, must, however, be devoted exclusively to the performance of these local administrative tasks. They may not be levied for any other purpose.

In these respects the governing bodies in the settlements and concessions very much resemble the city governments of America. They are, however, distinguished from them in the important respect that, as has been already suggested, they are administrative rather than political bodies. They have no standing as agencies, for local purposes, of the sovereign state from which, by municipal charter, they derive legal powers, to take action and to issue rules that have the force of law.

While they have authority to maintain police forces, the members of which may make arrests, they have no power to establish courts for the enforcement of the adminstrative rules which they issue—all judicial proceedings must be before the consular courts.[6]

Legal Basis of Administrative Ordinances. There is, indeed, great difficulty in finding a satisfactory logical basis for ascribing any legally controlling force to the rules and regulations issued by the governing authorities of the concessions and settlements, for they are not issued in pursuance of a delegated legislative authority derived from a sovereign legislative source. This difficulty was recognized by the American Secretary of State,

[6] Or, in the case of Englishmen, before the Supreme Court of China, or of Americans before the United States Court for China.

who, writing to the American Minister at Peking, March 7, 1887, said:

The question which you suggest as to the authority of the consul-general at Shanghai to enforce the ordinances of the municipality against citizens of the United States is not without difficulty. Under section 4086 of the Revised Statutes of the United States, consuls of the United States in China are empowered to exercise criminal and civil jurisdiction in conformity with the laws of the United States. It is provided, however, that when those laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended to the persons within the consul's jurisdiction; and if neither the common law [nor the law] of equity or admiralty, nor the Statutes of the United States, furnish appropriate remedies the ministers in the countries, respectively, to which the statute applies shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies.

The last clause, in respect to decrees and regulations, has been construed by the Department to confer upon the ministers in question the power to regulate the course of procedure and the forms of judicial remedies rather than any general legislative power for the definition of offences and the imposition of penalties for their commission. It is true that opinion has been divided on this point. Mr. Attorney-General Cushing held that the power given to the commissioner of the United States in China to make "decrees and regulations" which should have the force of law gave him the power to legislate in certain respects for citizens of the United States in China, and "to provide for many cases of criminality which neither Federal statutes nor the common law could cover." (7 Op. 505.) The disposition, however, of this department has been to restrict the legislative power of the minister to the regulation of the forms and course of judicial procedure, it not being regarded as desirable or proper to authorize the exercise of so great a power, while it was so much in doubt, as that of criminal legislation.

But the ordinances of the municipality of Shanghai, although

dependent for their operation as to citizens of the United States upon the approval of the minister of this Government in China, are conceived to present in one aspect a different question from that of the power of the minister of the United States as to criminal legislation. The municipality of Shanghai is understood to have been organized by the voluntary action of the foreign residents [of certain nationalities], or such of [those residents] as were owners or renters of land, for the purpose of exercising such local powers for the preservation of the order and morals of the community as are usually enjoyed by municipal bodies. In the United States, where government is reduced to a legal system, these powers of local police rest on charters granted by the supreme legislative authority of the State; but it is not difficult to conceive of a case in which a community outside of any general system of law might organize a government and adopt rules and regulations which would be recognized as valid on the ground of the right of self-preservation, which is inherent in people everywhere.

In this light may be regarded the municipal ordinances of Shanghai. The foreign settlement not being subject to the laws of China, and the legal systems of the respective foreign powers represented there being not only dissimilar inter se, but insufficient to meet the local needs, it became necessary for the local residents interested in the preservation of peace and order to supply the deficiency.

American citizens residing in Shanghai enjoy, in common with other persons composing the foreign settlement, all the rights, privileges, and the protection which the municipal government affords; and as they go there voluntarily, and presumptively for the advancement of their personal interests, they may reasonably be held to observe such police regulations as are not inconsistent with their rights under the laws of the United States. It is true that this reasoning is not conclusive as to the strict legal authority of the consul-general of the United States to enforce such regulations; but, taken in connection with the fact that at present American citizens in Shanghai are not subject to any judicial control except that of the consul-general of the United States, it affords a basis upon which his enforcement of the municipal regulations may be justified.

It is important to observe that the jurisdiction of consuls of the

United States in China is very extensive, including not only the administration of the laws of the United States, and the law of equity and admiralty, but also of the common law. The consular courts have, therefore, what the courts of the United States generally have not—common law jurisdiction in criminal cases. It is true that this jurisdiction is difficult, indeed incapable, of exact definition, but it implies the power to enforce rules which are not to be found on the statute book of the United States, and which can be ascertained only by the application of the general principles of the common law to special cases and conditions. In respect to matters of local police, a fair measure and definition of the law may be found in the regulations adopted by the municipality in aid of and supplementary to the general juridical systems of the foreign powers. Such a process, while maintaining the peace and order of the community, tends to consolidate the local administration of law.[6a]

Classes of Concessions and Settlements. Having considered certain characteristics common to all the concessions and settlements in China, we are now in a position to mention the respects in which these foreign municipal areas at the different treaty ports differ from one another. Classified by these differences they fall, according to Morse, into four classes, two of these classes, however, being represented each by but a single example.

1. In the first class we may place the concessions at Tientsin, Hankow, Kiukiang, Newchwang, Canton, and other ports, covering areas leased in perpetuity to particular Powers by the Chinese Government, these areas being divided into lots the sub-leases to which are sold and from the proceeds roads built, river banks "bunded" and other public improvements made. In these concessions the consul of the nation holding the concessional lease is the chief official. In the British concessions he is aided by a municipal council elected or

[6a] Quoted in Moore's *Digest of International Law*, II, 648.

nominated by the foreign taxpayers or holders of the sub-leases.

2. The "International" and French settlements at Shanghai are in a class by themselves. They include areas set apart for foreign residence and trade by the Chinese Government but not leased to the foreign powers concerned. Deeds to interests in lands within these areas are therefore issued by and registered with Chinese territorial authorities.[7]

3. As an illustration of the third class of concessions, those at the port of Chefoo may be described. "Here," says Morse, "there is neither concession nor settlement, in the sense of an administrative municipality, but since the opening of the port the entire promontory of Yentai, which projects into the harbor, has been more or less tacitly, and without any formal agreement, reserved for occupation as a foreign quarter. The residents have bought their own land, have made their own winding roads, and have maintained cleanliness and order mainly through the force of public opinion. They have assessed themselves and have expended their assessments through a headless committee, but have no official status as a self-governing administrative body."[8]

4. The fourth class of concessions may also be described by giving an example—that of Yochow. Again we will quote from Morse. "The municipal plan adopted at Yochow is one which has been introduced at some other ports. The Chinese government expropriated the land required for an 'international settlement,' laid out

[7] See at the end of this chapter a special note descriptive of the settlements at Shanghai.

[8] *Trade and Administration of China*, p. 221.

roads and sold the lots by auction, reserving an annual ground rent of a substantial amount; wharfage dues, moderate in amount, are levied; municipal work and police are under the joint control of the Yochow territorial Taotai and the Commissioner of Customs; all expenses are at the charge of the Chinese government, and the community is burdened neither with further taxation nor with the task of governing; in the event of further taxation becoming necessary, it will be under the control of a representative body. The population of Yochow is 20,000, and the ' treaty port ' is five miles distant, at a point where alone a safe anchorage could be found." [9]

Legation Quarter at Peking. As a result of the Boxer outbreak in 1900 the Treaty Powers found it necessary, for the protection of their legations at Peking, to obtain certain rights in addition to those ordinarily enjoyed by diplomatic representatives in foreign lands.

In a Protocol annexed to a note of January 16, 1901, China recognized the right of each Power to maintain a permanent guard for the protection of its Legation in the area or " Quarter " in Peking set apart for the use of the Legations. In the Final Protocol of September 7, 1901, the limits of this Quarter were defined, and by Article VII it was declared that:

> The Chinese Government has agreed that the Quarter occupied by the Legations shall be considered as one specially reserved for their use and placed under their exclusive control, in which Chinese shall not have the right to reside and which may be made defensible.[10]

[9] *Trade and Administration of China*, p. 231.

[10] For the delimitation of the Legation Quarter, see Annex No. 14 to the Final Boxer Protocol of 1901. See MacMurray, No. 1901/3, in which a

By a Protocol, under date of June 13, 1904, drawn up by the Diplomatic Body at Peking, a series of regulations regarding the use and occupation of land and roads within the Legation Quarter and of the glacis surrounding it was drawn up and the declaration made that the Representatives of the Powers would proceed to draw up a plan of general government for the police and control of the roads of the area and submit it for approval to their respective Governments. And, furthermore, that they would take steps to obtain the necessary authority to enforce these regulations upon their nationals, and to oblige them to pay the taxes intended to insure the service of the police and the maintenance of the roads.[11]

note to Article VII gives a translation of the Protocol of the Diplomatic Body regarding the Legation Quarter.

[11] Article X of the Sino-Japanese treaty of 1903 provides as follows:

"The High Contracting Parties agree that, in case of and after the complete withdrawal of the foreign troops stationed in the province of Chihli and of the Legation guards, a place of international residence and trade in Peking will be forthwith opened by China itself. The detailed regulations relating thereto shall be settled in due time after consultation."

In pursuance of this engagement an understanding was arrived at which was embodied in Annex 6 of the treaty of 1903.

In this Annex, the Chinese agreed that after the withdrawal of the troops as provided for in the treaty itself, "a place in Peking outside the Inner City, convenient to both parties and free from objections, shall be selected and set apart as a place where merchants of all nationalities may reside and carry on trade. Within the limits of this place merchants of all nationalities shall be at liberty to lease land, build houses and warehouses, and establish places of business; but as to the leasing of houses and land belonging to Chinese private individuals, there must be willingness on the part of the owners, and arranged without any force or compulsion. All roads and bridges in this place must be under the jurisdiction and control of China. Foreigners residing in this place are to observe the municipal and police regulations on the same footing as Chinese residents and they are not to be entitled to establish a municipality and police of their own within its limits except with the consent of the Chinese authorities. When such place of international residence and trade shall have been opened and its limits properly defined, the foreigners who have

Administration of the Legation Quarter. A very informal method of regulating the affairs of the Legation Quarter has been arranged by the various Diplomatic Representatives. There is appointed by them a Commission which levies taxes for the maintenance of roads and bridges and the employment of a corps of policemen, who, though Chinese, are employed and paid by the Legations, wear a special uniform, and are not under the control of the Peking authorities. The Commission has little power of its own; that is, it takes administrative action in each case only within the scope of the specific authorization given it by a unanimous vote of the Diplomatic Body or council of the heads of the several foreign Legations.

Foreign Garrisons in China. In addition to being permitted to maintain Legation guards at Peking, the Treaty Powers by Article IX of the Final Boxer Protocol of 1901, secured from China the right to maintain

been residing scattered both within and without the city walls shall all be required to remove their residence thereto, and they shall not be allowed to remain in separate places and thereby cause inconvenience in the necessary supervision by the Chinese authorities. The value of the land and buildings held by such foreigners shall be agreed upon equitably and due compensation therefore shall be paid. The period for such removal shall be determined in due time and those who do not remove before the expiry of this period shall not be entitled to compensation."

The foregoing undertaking, it will be observed, was made by the Chinese Government to the Imperial Japanese Commissioners, and a point might therefore be raised as to the extent to which the Chinese are bound by its provisions to the other treaty powers. Insofar as the undertaking creates rights or privileges the nationals of the other Powers would be entitled to them under the operation of the most favored nation principle. But insofar as there is a declaration that all foreigners must move into this settlement after it is created, the right to require this would be an exercise of China's sovereignty.

As yet there has been no withdrawal of foreign legation troops and legation guards, so that no obligation upon the part of China to establish this foreign area in Peking has accrued.

garrisons at certain points between Peking and the sea, of which Tientsin should be one, the intention being thus to avoid the danger in the future of having communications between the capital and the sea cut by forces hostile to the Powers. The forts at Taku and other forts that might interfere with free communication between Peking and the sea were also to be demolished.

By identic notes of July 15, 1902,[12] the five Powers maintaining at that time a Provisional Government over Tientsin—that is, France, Germany, Great Britain, Italy, and Japan — proposed that the Chinese Government should undertake not to station or march troops within twenty Chinese li (i. e., between 6 and 7 miles) of the city or of the troops stationed at Tientsin, and, furthermore, that the jurisdiction of the commanders of the foreign troop should continue to extend to a distance of two miles on either side of the railway; but that the Viceroy should have the right to maintain a personal bodyguard in the city of Tientsin, not exceeding three hundred men, and also to maintain an efficient body of river police along the lines of the river even where it might run within two miles of the railway. The right of foreign troops to occupy summer quarters was also to be recognized by the Chinese.

These proposals were accepted by the Chinese Government with the interpretative reservation that the military control along the railway should relate only to offenses against the railroad or telegraph lines, or against the allies or their property.

[12] For the correspondence in regard to this arrangement and the military control of the railway from Peking to Shanhaikuan in 1912, see the note to Article IX of the Boxer Protocol as printed in MacMurray, No. 1901/3.

During the revolutionary troubles of 1911-1912 the Treaty Powers deemed it necessary to institute military control over the Peking-Mukden railway as far as Shanhaikuan. This control is still continued. At the time the road was taken under control by the Powers, different sections of it were allocated to the different Powers, each of which was made responsible for the guarding of its section. These allocations, roughly speaking, were as follows: Peking (Fengtai Junction) to Tientsin, to Great Britain; Tientsin and a small section eastward, to France; the branch line to Taku, to Italy; the Tientsin-Shanhaikuan section was divided among the Germans, Americans and Japanese. During the Great War the French section was turned over to the Japanese; and the German section to the Americans. The control now exercised by the British over their section is represented by only a few small posts.

APPENDIX A TO CHAPTER V
TIENTSIN

The following succinct statement of concessional conditions at Tientsin is given by Morse, *The Trade and Administration of China,* p. 216.

"Tientsin is rich in 'concessions' for residence and foreign trade, having no less than thirteen—viz., British (1860), British Extension (1897), British Extra-mural Extension (1900), French (1861), French Extension (1900), American (granted in 1861, but at once abandoned and in 1902 added to the British Concession), German (1895), German Extension (1901), Japanese (1896), Japanese Extension (1900), Austro-Hungarian (1902), Italian (1901), Russian (1900), and Belgian (1902). The last four and the various extensions, except the British date

from 1900 and later. The original concession, the British, dating from 1860, is held under a lease in perpetuity to the British government, a small ground-rent being reserved to show the ultimate sovereignty of China. The area was divided into lots, the leases of which were sold to provide for roads and bunding, and which are held under a ninety-nine years' lease granted by the British government, the annual rental being the due proportion of the reserved ground-rent. The Consul is *ex officio* the ruling functionary; all actions of the Municipal Council, elected by vote of the 'land-renters,' being submitted for his approval, and the annual 'town meeting' or any special meeting being held under his presidency. The residence of Chinese on the concession being prohibited, otherwise than as servants of the foreign residents, the Consul has jurisdiction over all questions of landed property, and over all other questions in which a non-British European is not defendant. The Consul, as representative of his government, is *de jure* ruler of the concession; but, in conformity with English practice, he actively intervenes only in a crisis, and ordinarily the duly-elected Municipal Councillors are *de facto* rulers of a self-constituted little republic. In the other concessions nomination, and not election, decides the choice of councillors. For the French concession the Municipal Council consists of the Consul as *ex officio* President, the six land-owners paying the highest taxes, and the three tenants paying the highest rent. Germany in 1897 contracted with a commercial syndicate to develop and administer her concession; and in 1895 the Reichstag passed an enabling Act to allow self-government when desired. On the Japanese, Russian, Belgian, and Italian concession the Consul is sole administrator. On the Austro-Hungarian concession there is little if any Austrian or Hungarian interest, the land-owners and inhabitants being Chinese; and here the power is vested in an Administrative Secretary, nominated by the Consul, and in six of the leading Chinese residents, also nominated. Of the Extensions, the French, German and Japanese are merely extensions of the original concessions, held in the same way under lease in perpetuity to the foreign power. In the British Extension, which was the first, a different principle was followed. The soil remains

Chinese, and title-deeds are sealed and issued by the Chinese authorities as at Shanghai, and as at Shanghai it is only administrative functions—taxing, works and police—which are delegated by the sovereign power. The Municipal Council, in its corporate capacity, and the 'land-renters' of the British Concession own a considerable portion of the land in its extension, and the Municipal Council of the extension is composed of the members elected to the Municipal Council of the concession, *ex officio,* and four others elected *ad hoc.* This makes it possible, while having separate budgets, to carry on the administrative work of the two areas with a staff common to both. In the foreign residential section of Tientsin, with a total area of 3,550 acres, of which 28 per cent. is in the Russian Concession, we have thus six distinct forms of government under eight European powers."

APPENDIX B TO CHAPTER V
SHANGHAI

The following description of Shanghai is given by Morse, *Trade and Administration of China,* p. 244.

"Shanghai is mentioned in history 2,150 years ago, and 900 years ago was a mart of sufficient importance to be made a customs station. It was occupied in 1842 by the British forces on their way to Nanking, and, having been declared a treaty port by the treaty of Nanking, was formally opened to trade on November 17th, 1843. The first district to be occupied for foreign residence was selected by the British authorities, bounded on the south by the Yangkingpang, a ditch running east and west about a quarter-mile north of the Chinese city, on the north by the Soochow Creek, on the east by the Hwangpu, and on the west by Defence Creek dug at one mile distant from the Hwangpu, enclosing an area of 470 acres with a river frontage of three-fourths of a mile. In 1849 the French authorities delimited an area between the Yangkingpang and the city, and in 1853 obtained in extension the narrow strip lying between the city and the river, having, with narrow depth, a river frontage of nearly three-fourths of a mile. The

Americans occupied the district called Hongkew, lying north of the Soochow Creek, with frontage on that creek and on the river, including the most narrow part of the wharfage of Shanghai. This American Settlement was in 1863 amalgamated with the British Settlement, both governments waiving their exclusive rights and thereby creating the self-governing republic styled 'The Foreign Community of Shanghai, North of the Yangkingpang,' the French Government having refused to surrender its jurisdiction over the so-called 'Concession Française.' In 1899 these various settlements were extended, and the authority of the Municipal Council of the 'International Settlement,' as it is called for short, now extends over 5,584 acres, while the present area of the 'Concession Française' is 358 acres.

. . . . "The resident population under the French Municipality in 1905 was 831 foreigners (including 274 French, 109 British, 47 German, 73 Japanese) and 84,792 Chinese. By whatever name they are called, and whatever the minor differences in their form of government, the several 'reserved areas' at Shanghai, whether British, French or American, or International, are not concessions such as exist at Tientsin, Hankow, and Canton, where a grant has been made by a lease in perpetuity from the government of China to the foreign Power, and where the 'land-renter' holds under a title-deed issued by the foreign lessee Power, and registered only at the Consulate of that Power. They are 'Settlements,' reserved areas within which foreigners are permitted to acquire land, in which Chinese may continue to hold land, in which foreigners acquire land by direct negotiation with the original owners—for such land a bill of sale is not issued, but it is held under 'perpetual lease,' sealed and issued by the Chinese territorial authority; and this title-deed may be registered at any Consulate, ordinarily that of the land-renter, and not compulsorily at that of the titular controlling Power. The Settlement has complete self-governing power, including the power of taxation and police; but the systems on the two sides of the Yangkingpang differ. They are alike only in not granting the franchise to Chinese, who are considered to be residents of the Foreign Settlements by sufferance, a sufferance dating from the time when they came by thousands as refugees

from the Taipings, and found under the foreign flags the safety they could not find under their own.

"The first Land Regulations for the British Settlement were drawn up in 1845, with a 'Committee of Roads and Jetties' nominated by the Consul. These, as amended in 1854 and approved by the Chinese authorities, extended the privilege of acquiring land within the Settlement to all foreigners; and when in 1863 the British and American Settlements were united, the Municipal Council, first elected in 1855, became the Municipal Council of the Settlement with the long name mentioned before. The land regulations were last amended in 1898, and, having received the assent of the foreign Ministers at Peking, are now the governing charter of the community. The electorate consists of all householders who pay rates on an assessed rental of Tls. 500 a year, and owners of land valued at Tls. 500. The French Municipality was organized in 1862; the electorate consists of all owners of land, occupants paying a rental of 1,000 francs a year, and residents having an income of 4,000 francs a year; and the Municipal Council is under the presidency of the French Consul-General, whose assent is necessary for the validity of its decisions. Under these forms of government the place has grown in wealth, the International Settlement, built up by British, American, and German enterprise, naturally more rapidly than the French.

"In the international Settlement at Shanghai, the various Chinese commercial bodies elect three Chinese delegates as the authorized persons with whom the Council may consult regarding affairs of the Chinese residents."

For a more extended account of the government of Shanghai, and its historical development, see Morse's *International Relations of the Chinese Empire,* Vol. II, Chapter VI.

At the present time (1920), the Chinese dwelling within the International Settlement are urging that they be given a certain amount of participation in the government of the area of whose population they constitute a so considerable portion, and in which they own and pay taxes upon so much property.

The "Status of the Shanghai Municipality" is interestingly discussed by R. S. Gundry, C. B., in *The Journal of Comparative Legislation and International Law,* 3d. Series, January 1920.

CHAPTER VIII

Leased Areas

In later chapters dealing with the situation in Manchuria and Shantung we shall have occasion to consider in more detail conditions in the leased areas of Kiaochow and the Liaotung peninsula. In the present chapter we shall be concerned simply with the circumstances under which the leases were obtained and with their terms.

Kiaochow. As early as the spring of 1897 Germany had made known to the other Powers her desire to obtain a naval station on the coast of China and soon after sent surveying parties along the coasts of Fukien, Chekiang, and Shantung.[1]

On November 1, 1897, two Roman Catholic missionaries, subjects of Germany, were murdered by a band of robbers who were plundering a Shantung village. Although there had been no claim of complicity on the part of the Chinese authorities, or clear evidence that the priests [2] had been killed because of their foreign nationality, and despite the fact that the Chinese Government took prompt steps to apprehend and punish those guilty of or responsible for the killing, the German Government took such immediate and energetic action that it was apparent that it had been but waiting until some event

[1] *Cf.* Morse, *Int. Rels. of Chinese Empire*, Vol. III, p. 106.

[2] The murdered men were Jesuit priests and therefore members of an order that was excluded from Germany.

should occur which would furnish it with a bare color of right to demand of China a territorial foothold within its dominions. Within less than a week after the murder became known and less than a fortnight after it had occurred, a German force had landed at, and taken possession of, the port of Tsingtao; and eight days later, the German Government presented to China a formidable list of demands, which were soon supported by the naval expedition sent to the East under the command of Prince Heinrich, the brother of the Kaiser.

These demands were six in number and as follows:

1. That a tablet be erected by the Chinese Imperial government in memory of the murdered priests.
2. That an indemnity be paid.
3. That the Governor of Shantung be dismissed from the public service.
4. That expenses incurred in the occupation of Tsingtao be repaid.
5. That to Germans be given the sole right to construct railways and to open coal mines in the Province of Shantung.
6. That Germany be granted a naval station at Kiaochow.

It would appear that Great Britain was not aware of the fact that this sixth demand had been made. Had she known it, it is almost certain that she would have protested to the Chinese against its being granted, for she was at that time and has since been opposed to the cession of Chinese territory to foreign nations. As it was, she objected to the grant to Germany of the commercial privileges that were asked for, and notified the Chinese Government that while she advised the granting of the

first four of Germany's demands, the British Government would "feel themselves compelled, if the fifth point is conceded, to demand equality of treatment for British subjects under the most favored nation clause of the treaties, and compensation will be demanded on points in respect to which rights secured by treaty have been disregarded."[3] Again, a few days later, the British Minister to China was instructed to say that the British Government would object to any concession to Germany of exclusive commercial privileges. "It was at this stage," says Morse, "that the British envoy was told by the Chinese ministers that the 'absence of any assurance that Kiaochow would be evacuated if the demands were conceded was delaying the negotiations, and that Germany had asked for a coaling station,' but it was only when the demands were 'all practically agreed to' that he learned that the cession of territory on Kiaochow Bay was to be the 'guarantee for future good behavior.'" By this time, as Morse points out, the matter of the lease had gone too far to be stopped unless Great Britain was willing to use force, which she was not.

Without foreign support, China was helpless and had no option but to sign the convention of March 6, 1898,[4] which provided for the lease for ninety-nine years of the Bay of Kiaochow and surrounding territory, together with important railway and mining rights in Shantung which will be more particularly described in a later chapter.

In connection with this lease of Kiaochow it may also

[3] Lord Salisbury to Sir C. MacDonald, Nov. 3, Dec. 8, 1897. "China" No. 1, 1898, pp. 3, 7. Cited by Morse, *Int. Rels.*, III, p. 113.

[4] For text, see MacMurray, No. 1898/4.

be mentioned that Russia had had Kiaochow in mind as an Eastern ice-free port, and, possibly, had received from the Chinese some more or less definite assurances that it might be obtained. The lease to Germany was therefore in derogation of whatever claims upon the place Russia may have had. This fact gave some additional weight to the demand which Russia was soon to make for the lease of the Liaotung peninsula with the harbor of Port Arthur.

Dr. E. J. Dillon who is known to have had exceptional opportunities of knowing the inside facts of Russia's foreign politics, and who was on terms of intimate acquaintance with many of the public men of that country, and especially with M. Witte, in his recently published volume *The Eclipse of Russia* (published in 1918) gives an interesting account of the circumstances under which Germany obtained the Czar's approval of her project to lease Kiaochow. Germany, says Mr. Dillon, had expected to receive payment from China when, in participation with Russia and France, she forced Japan to retrocede the Liaotung peninsula to China, and was disappointed when she was not admitted to participation in the Russo-Chinese Bank which, as will presently be noted, was established to acquire control of financial and economic interests in China. This exclusion increased Germany's determination to obtain compensation in the form of a foothold upon the coast of China. This project was not favored by M. Witte whose Far Eastern policy involved the maintenance of China's territorial integrity and the advancement of Russia's interests by means of peaceful economic penetration. He therefore was greatly surprised and disturbed when he learned that the German Kaiser,

upon the occasion of a visit to the Czar, had obtained from him the pledge that the lease of Kiaochow by Germany would not be objected to by Russia. Mr. Dillon reports the conversation between the two monarchs as follows:

"In the course of conversation with Nicholas the Kaiser suddenly broke away from the ordinary topics and exclaimed, 'I want you to do me a favor—As you know, I am badly in need of a port. My fleet has no place worthy of the name outside my Empire. And why should it be debarred? That may, perhaps, serve the purposes of covert enemies, but not Russians. I know your friendly sentiment towards me and my dynasty. I want you to say frankly, have you any objection to my leasing Kiaochow in China? What name did you say? Kiaochow. No—none. I see no objection whatever. The Kaiser thanked his host profusely and the imperial pair drove to the palace."[5]

Later, as Mr. Dillon reports, the Czar much regretted his promise, and declared that the Kaiser had played a nasty trick on him, by thus inducing him to make an unconsidered promise, but that, having given his word, he was not willing to go back upon it.

From the published Memoirs of M. Gérard, who was the French Minister at Peking, it would appear that France also was not favorable to Germany's project to obtain a territorial foothold in China, but, her ally Russia having consented, was not in a position to press her own objection.

[5] *Op. cit.*, p. 248.

Sino-German Convention of 1898. Article II of the treaty of 1898 read as follows:

With the intention of meeting the legitimate desire of His Majesty the German Emperor, that Germany like other Powers should hold a place on the Chinese coast for the repair and equipment of her ships, for the storage of materials and provisions for the same, and for other arrangements connected therewith, His Majesty the Emperor of China cedes to Germany on lease, provisionally for ninety-nine years, both sides of the entrance to the Bay of Kiaochow. Germany engages to construct, at a suitable moment, on the territory thus ceded fortifications for the protection of the buildings to be constructed there and of the entrance to the harbor.

By Article III the limits of the ceded area were set out, and the undertaking made that "in order to avoid the possibility of conflicts, the Imperial Chinese Government will abstain from exercising rights of sovereignty in the ceded territory during the term of the lease, and leaves the exercise of the same to Germany."[6]

By this Article it was also provided that "Chinese ships of war and merchant vessels shall enjoy the same privileges in the Bay of Kiaochow as the ships of other nations on friendly terms with Germany; and the entrance, departure, and sojourn of Chinese ships in the bay shall not be subject to any restrictions other than those which the Imperial German Government, in virtue of the rights of sovereignty over the whole of the water area of the bay transferred to Germany, may at any time find it necessary to impose with regard to the ships of other nations."

"No dues are to be demanded of Chinese war or mer-

[6] The area leased amounted to about 200 square miles, not including the Bay and islands.

chant ships in the bay except such as may be levied upon other vessels for maintaining the necessary harbor arrangements and quays." (Art. IV.)

In Article V it was provided that "should Germany at some future time express the wish to return Kiaochow Bay to China before the expiration of the lease, China engages to refund to Germany the expenditure she has incurred at Kiaochow, and to cede to Germany a more suitable place."

"Germany engages at no time to sublet the territory leased from China to another Power." The significance of this provision in connection with the transfer to Japan of the German rights—a matter later to be discussed—is readily seen. Also, in connection with the claims which Japan has made upon China with reference to rights in Shantung, it is to be noted that by an agreement of November 28, 1905, between the German and Chinese Governments, it was provided that the German troops should be withdrawn from the cities of Kiaochow and Kaomi, and that the policing of the railways within the fifty kilometre zone should revert to the Chinese local authorities and police.

In other articles of the treaty Germany engaged to construct the necessary navigation signals on the islands and shallows at the entrance of the bay, to give the protection of the German Government to all Chinese living in the ceded area so long as they should behave in conformity with law and order, and they were to be allowed to remain within the area "unless their land is required for other purposes" in which case they were to receive compensation therefor.

As will be pointed out in a later chapter dealing with

the Open Door policy in China, Germany in response to the letter of the American Secretary of State pledged herself not to use her Shantung rights in derogation of the principle of " absolute equality of treatment of all nations with regard to trade, navigation, and commerce."

In an earlier section the arrangement between the German authorities and the Imperial Maritime Customs Service of China with regard to customs duties and customs administration has been described.

Around the ceded area, it was provided by Article I there should be a zone of 50 kilometres (100 Chinese li) over which the German troops should have free passage at any time, but within which the Chinese Government, while reserving all rights of sovereignty was " to abstain from taking any measures, or issuing any ordinances therein, without the previous consent of the German Government, and especially to place no obstacle in the way of any regulation of the water-courses which may prove to be necessary. His Majesty the Emperor of China, at the same time, reserves to himself the right to station troops within that zone, in agreement with the German Government, and to take other military measures."

The matter of customs within the neutral zone was provided for by the following clause of Article V:

> As regards the re-establishment of Chinese customs stations which formerly existed outside the ceded territory, but within the 50-kilom. zone, the Imperial German Government intends to come to an agreement with the Chinese Government for the definitive regulation of the custom frontier, and the mode of collecting customs duties, in a manner which will safeguard all the interests of China, and proposes to enter into further negotiations on the subject.

The provisions of the treaty of 1898 with reference to the railway and mining rights in Shantung granted to Germany will be discussed in a later chapter in which "Spheres of Interest" in China are discussed.

In 1900, during the Boxer uprising, Germany stationed permanent garrisons in the cities of Kiaochow and Kaomi. To this China objected as being an exercise of a right which she had not granted, and, in pursuance of an understanding arrived at on November 28, 1905, these garrisons were withdrawn, and China resumed the policing of the German railways, but the right of Germany, upon notification to the Chinese authorities, to send troops into the neutral zone for temporary purposes, was reaffirmed.[7]

Liaotung Peninsula. Just three weeks after the lease of Kiaochow China found herself obliged to lease to Russia, for twenty-five years, the harbors of Port Arthur and Talienwan (renamed Dalny by the Russians, and still later Dairen by the Japanese) and adjacent waters. The purpose of this lease, as declared by the treaty of March 27, 1898, was to give protection to the Russian fleet and to enable it to have a secure base on the north coast of China. But, it was declared, the lease was in no way to violate the sovereignty of China in the territory.

By Article IV of this agreement it was provided that:

> During the above-mentioned period, in the territory leased by the Russian Government and its adjacent water area, the entire military command of the land and naval forces and equally the supreme civil administration will be entirely given over to the Russian authorities and will be concentrated in the hands of one person who

[7] For text of this agreement of 1905, see note to Article I of the treaty as printed in MacMurray, No. 1898/4.

shall not have the title of governor or governor general. No Chinese military land forces whatsoever will be allowed on the territory specified. Chinese inhabitants retain the right, as they may desire, either to remove beyond the limits of the territory leased by Russia or to remain within such limits without restriction on the part of the Russian authorities. In the event of a Chinese subject committing any crime within the limits of the leased territory, the offender will be handed over to the nearest Chinese authorities for trial and punishment in accordance with Chinese laws, as laid down in Article VIII of the Treaty of Peking of 1860.[8]

A neutral strip to the north of the leased area was provided for by Article V. "Within this specified neutral zone the civil administration will be entirely in the hands of the Chinese authorities; Chinese troops will be admitted within this zone only with the consent of the Russian authorities."

By other Articles of the treaty it was provided that Port Arthur should be solely a naval port, only Russian and Chinese vessels to be allowed to use it, and to be considered a closed port so far as the war and merchant vessels of the other Powers were concerned.

However, as to Talienwan, it was provided that, with the exception of a part of the port which was to have the same status as Port Arthur, the place was to be a trading port where the merchant vessels of all countries might freely come and go.

Russia engaged herself to supply the funds for, and herself to erect what buildings might be required for naval or military forces, and to construct batteries or barracks for the garrisons at such places as she might desire.[9]

[8] MacMurray, No. 1898/5.

[9] The text of this treaty given by Rockhill is from a Chinese *précis*. The Russian text was published by the Russian Foreign Office in the *Recueil*

The treaty of lease of March 27, 1898, was supplemented by the agreement of May 7, 1898, which fixed the definite limits of area ceded, and contained the agreement upon the part of the Chinese Government (Art. V):

1. That without Russia's consent no concession will be made in the neutral ground for the use of subjects of other Powers.
2. That the ports on the sea-coast east and west of the neutral ground shall not be opened to the trade of other Powers.
3. And that without Russia's consent no road and mining concessions, industrial and mercantile privileges shall be granted in the neutral territory.[10]

Kuangchouwan. The example having been set by Germany and Russia, France soon followed suit and helpless China was obliged to lease to that country for ninety-nine years the port of Kuangchouwan, opposite the island of Hainan, as a "naval station with coaling depot."

The convention was submitted to the Tsung-li Yamen on May 27, 1898, and ratified by China on February 19, 1900, and expressly provided that it should be understood that the lease did "not offset the sovereign rights of China over the territory ceded."

The important clauses of this convention read as follows:

ARTICLE III. The territory shall be governed and administered during the ninety-nine years of the lease by France alone, so that all possible misunderstanding between the two countries shall be obviated.

The inhabitants shall continue to enjoy their property; they may

des Traités concernant l'Extrême Orient. The Russian and Chinese versions are given in the *Customs Treaties.* The text given by MacMurray is a translation from the Russian text in the *Recueil.*

[10] Translation in MacMurray, No. 1898/9.

continue to inhabit the leased territory and pursue their labors and occupations, under the protection of France, so long as they respect its laws and regulations. France shall pay an equitable price to the native property owners for the land which it may wish to acquire.

ARTICLE IV. France may erect fortifications, place garrisons of troops or take any other defensive measure on the leased land.

She may erect lighthouses, set buoys and signals useful for navigation on the leased territory, along the islands and coasts, and, in a general way, take all measures and adopt all plans to insure the freedom and safety of navigation.

ARTICLE V. Steamers of China as well as the ships of the Powers having diplomatic and commercial relations with her, shall be treated within the leased territory in the same manner as in the opened ports of China.[11]

France may issue all regulations she may wish for the administration of the territory and of the ports and particularly levy lighthouse and tonnage dues destined to cover the expense of erecting and keeping up lights, beacons and signals, but such regulations and dues shall be impartially used for ships of all nationalities.

ARTICLE VI. If cases of extradition should occur, they shall be dealt with according to the provisions of existing conventions between France and China, particularly those regulating the neighboring relations between China and Tongking.[12]

Kowloon, Mirs Bay and Deep Bay. On June 9, 1898, Great Britain obtained from China, as "an extension of Hongkong territory" and necessary for its "proper defence and protection," a lease for ninety-nine years of certain islands, a portion of the mainland opposite Hongkong, and Mirs Bay.

[11] Kuangchouwan was made a "free port" by France soon after the lease was effected.

[12] MacMurray, No. 1898/10.

It is at the same time agreed (the Convention reads) that within the city of Kowloon the Chinese officials now stationed there shall continue to exercise jurisdiction as far as may be consistent with military requirements for the defence of Hongkong.[13] Within the remainder of the newly leased territory Great Britain is given sole jurisdiction. Chinese officials and people are to be allowed as heretofore to use the road from Kowloon to Hsinan.

It is further agreed that the existing landing place near Kowloon city shall be reserved for the convenience of Chinese men-of-war, merchant and passenger vessels, which may come and go and lie there at their pleasure; and for the convenience of movement of the officials and people within the city.

When hereafter China constructs a railway to the boundary of the Kowloon territory under British control, arrangements shall be discussed.

It is further understood that there will be no expropriation or expulsion of the inhabitants of the district included within the extension, and that if land is required for public offices, fortifications, or the like, official purposes, it shall be bought at a fair price.

If cases of extradition of criminals occur, they shall be dealt with in accordance with the existing treaties between Great Britain and China and the Hongkong Regulations.

The area leased to Great Britain as shown on the annexed map, includes the waters of Mirs Bay and Deep Bay, but it is agreed that Chinese vessels of war, whether neutral or otherwise, shall retain the right to use those waters.[14]

Weihaiwei. Completing the series of leases of territory by China came that of Weihaiwei to Great Britain effected by the convention of July 1, 1898.[15]

The reason for this lease, as stated in the convention,

[13] Taking advantage of this qualification Great Britain by an Order-in-Council of December 27, 1899, has ousted the Chinese from this jurisdiction. *Hertslet's Treaties*, p. 749.

[14] MacMurray, No. 1898/11. Before this convention Great Britain had a small foreshore at Kowloon.

[15] MacMurray, No. 1898/14.

was "to provide Great Britain with a suitable naval harbor in North China and for the better protection of British commerce in the neighboring seas."

The lease, it is declared, shall endure "for so long a period as Port Arthur shall remain in the occupation of Russia."[16]

Within the area leased it is provided that Great Britain "shall have sole jurisdiction."

Great Britain shall have, in addition, the right to erect fortifications, station troops, or take any other measures necessary for defensive purposes, at any points on or near the coast of the region east of the meridian 121° 40′ east of Greenwich, and to acquire on equitable compensation within that territory such sites as may be necessary for water supply, communications, and hospitals. Within that zone Chinese administration will not be interfered with, but no troops other than Chinese or British shall be allowed therein.

It is also agreed that within the walled city of Weihaiwei, Chinese officials shall continue to exercise jurisdiction except so far as may be inconsistent with naval and military requirements for the defence of the territory leased.[17]

It is further agreed that Chinese vessels of war, whether neutral or otherwise, shall retain the right to use the waters herein leased to Great Britain.

It is further understood that there will be no expropriation or expulsion of the inhabitants of the territory herein specified, and that if land is required for fortifications, public offices, and any official or public purpose, it shall be bought at a fair price.[18]

Before the lease convention was signed, on April 19,

[16] With the transfer in 1906 of Port Arthur to the Japanese it might have been possible for the Chinese to raise the question whether the Weihaiwei lease was not *ipso facto* terminated. No such question has, however, been raised.

[17] Great Britain has not exercised her right to fortify Weihaiwei.

[18] See R. F. Johnston, *Lion and Dragon in Northern China*, for an account of British activities and administration in the Weihaiwei leased territory.

1898, Great Britain formally declared to Germany " that in establishing herself at Weihaiwei, she has no intention of injuring or contesting the rights and interests of Germany in the Province of Shantung, or of creating difficulties for her in that province. It is especially understood that England will not construct any railway communication from Weihaiwei and the district leased therewith into the interior of the Province of Shantung.[19]

Italy. On February 28, 1899, Italy demanded of China the lease of Sanmen Bay on the coast of Chekiang as a coaling station and naval base, together with certain other rights. China refused and all that Italy received was a mining concession in northern Chekiang.

Extraterritorial Rights in Leased Territories. With the lease of these territories to Germany, Russia, France, and Great Britain, the question arose whether, the actual government and control of these territories having gone out of Chinese hands and into those of the Western States concerned, the nationals of the other Treaty Powers might continue to claim and exercise within them rights of extraterritoriality.

As to this, the general position of the Powers, except Japan, was that these rights could not be claimed, though Japan herself changed her ground when she supplanted Russia in possession of the Liaotung Peninsula after the Russo-Japanese War.

An excellent discussion of this point of law is found in a memorandum prepared by the Solicitor for the Department of State and sent by Secretary Hay to the American

[19] Rockhill, p. 180; MacMurray, No. 1898/4 (note).

Minister at Peking.[20] In his covering letter Secretary Hay said:

The intention and effect of China's foreign leases having apparently been the relinquishment by China during the term of the leases and the conferment upon the foreign power of all jurisdiction over the territory, such relinquishment and transfer of jurisdiction would seem also to involve the loss by the United States of its right to exercise extraterritorial consular jurisdiction in the territories so leased, while, as you remark, as these territories have practically passed into the control of peoples whose jurisprudence and method are akin to our own, there would seem to be no substantial reason for claiming the continuance of such jurisdiction during the foreign occupancy or tenure of the leased territory.

As a corollary to this view, which from your statement appears to be held by all the powers, with the exception of Japan, the ordinary consular functions prescribed and defined in the intercourse of the Christian powers among themselves [i. e., those functions not connected with the matter of extraterritoriality] could obviously not be exercised within the leased terrritory by a consul of the United States stationed in neighboring Chinese territory without some express recognition of his official character, by exequatur or otherwise, on the part of the sovereign into whose control the territory has passed by lease for the time being. . . . It remains to be determined in what manner the interests of American citizens in such leased territories are to be watched over and, in case of need, protected by the agencies common in the intercourse of civilized persons. Those interests, often situated in the interior, remain for the most part under the same Chinese surroundings as heretofore, the superior control of the lessee power being manifested through native agencies and by way of influence rather than by direct administration. Under such circumstances, the United States cannot be expected to forego the use of all the customary agencies of intercourse in behalf of its citizens and their property and commerce.

[20] *U. S. For. Rels.*, 1900, pp. 387 ff.

In the memorandum inclosed in Secretary Hay's letter to Minister Conger, the texts of the Sino-American treaties granting extraterritorial rights were quoted, after which, the Solicitor added:

As it is expressly stipulated in the lease that China retains sovereignty over the territory leased, it could doubtless be asserted that such territory is still Chinese territory and that the provisions of our treaties with China granting consular jurisdiction are still applicable therein. But in view of the express relinquishment of jurisdiction by China, I infer that the reservation of sovereignty is merely intended to cut off possible future claim of the lessee that the sovereignty of the territory is permanently vested in them. The intention and effect of these leases appear to me to have been the relinquishment by China, during the term of the lease, and the conferring upon the foreign power in each case of all jurisdiction over the territory. Such relinquishment would seem, also, to involve the loss by the United States of its right to exercise consular jurisdiction in the territories leased.

CHAPTER IX

The Open Door in China and Guarantees of China's Sovereignty, Territorial and Administrative Integrity

The "Open Door" in China. It has already appeared that, under the operation of the most favored nation clause, which all the Treaty Powers have had inserted at some time in their respective treaties with China, all these Powers or their nationals are placed upon an equality with regard to such rights of trade and navigation as China has seen fit or been compelled to grant. And, until the closing years of the nineteenth century, this principle was sufficient to keep all the nations upon a substantial equality of rights and privileges in their commercial and financial dealings with China. However, as will be shown in the next chapters, following the Sino-Japanese War of 1894-1895 which revealed the utter military weakness of China, there was inaugurated a régime in which not only was China obliged to part with practical administrative control over a number of leased areas, but in which also, there came to the front the persistent efforts of the various Treaty Powers to mark out for themselves great portions of China within which they might claim to enjoy preferential rights as regards the granting by China of railway and other concessions. It thus seemed that not only was the "Breakup" of China imminent, but that, pending that process, there was to be a struggle between the Powers for preferential

privileges in those portions of China that might still remain under the administrative control of the Chinese authorities. This matter of the creation of " spheres of interest " or of " influence " will be more specifically considered in the next chapter: it is here referred to only as explaining the reason why, with America taking the lead, there should have been developed the doctrine of the Open Door—a doctrine that denied to the Powers the right to claim within their special spheres of interest preferential rights in matters of trade and commerce.

Secretary Hay's Circular Letter. The movement to secure the formal acceptance by the Powers of the principle that they would not claim for their own nationals within their respective spheres or leased areas preferential treatment as regards customs duties, harbor dues, transportation charges, etc., was initiated by the American Secretary of State, John Hay, in the fall of 1899. He caused to be submitted to the Chancelleries of Germany, Russia, France, Japan, Great Britain and Italy, for their approval, the following formulation of a general policy to be pursued in China.[1]

The President [of the United States] . . . understands it to be the settled policy and purpose of Great Britain not to use any privileges which may be granted to it in China as a means of excluding any commercial rivals, and that freedom of trade for it in that Empire means freedom of trade for all the world alike. Her [Britannic] Majesty's Government, while conceding by formal agreements with Germany and Russia the possession of " spheres of

[1] The communications to these countries with slight changes to meet special conditions, were in the same words. The clauses above quoted are from the commuuication to the British Foreign Office. For texts of communications and replies, see MacMurray, No. 1900/2.

influence or interest" in China, in which they are to enjoy special rights and privileges, particularly in respect to railroads and mining enterprises, has at the same time sought to maintain what is commonly called the "open door" policy, to secure to the commerce and navigation of all nations equality of treatment within such "spheres." The maintenance of this policy is alike urgently demanded by the commercial communities of our two nations, as it is justly held by them to be the only one which will improve existing conditions, enable them to maintain their positions in the markets of China, and extend their future operations.

While the Government of the United States will in no way commit itself to any recognition of the exclusive rights of any power within or control over any portion of the Chinese Empire, under such agreements as have been recently made, it cannot conceal its apprehensions that there is danger of complications arising between the treaty powers which may imperil the rights insured to the United States by its treaties with China.

It is the sincere desire of my government that the interests of its citizens may not be prejudiced through exclusive treatment by any of the controlling powers within their respective "spheres of interest" in China, and it hopes to retain there an open market for all the world's commerce, remove dangerous sources of international irritation, and thereby hasten united action of the powers at Peking to promote administrative reforms so greatly needed for strengthening the Imperial Government and maintaining the integrity of China, in which it believes the whole western world is alike concerned. It believes that such a result may be greatly aided and advanced by declarations by the various Powers claiming "spheres of interest" in China as to their intentions in regard to the treatment of foreign trade and commerce therein, and that the present is a very favorable moment for informing Her Majesty's Government of the desire of the United States to have it make on its own part and to lend its powerful support in the effort to obtain from each of the various Powers claiming "spheres of interest" in China a declaration substantially to the following effect:

(1) That it will in no wise interfere with any treaty port or

any vested interest within any so-called "sphere of interest" or leased territory it may have in China.

(2) That the Chinese treaty tariff of the time being shall apply to all merchandise landed or shipped to all such ports as are within such "spheres of interest" (unless they be "free ports"), no matter to what nationality it may belong, and that duties so leviable shall be collected by the Chinese Government.

(3) That it will levy no higher harbor dues on vessels of another nationality frequenting any port in such "sphere" than shall be levied on vessels of its own nationality, and no higher railroad charges over lines built, controlled, or operated within its "sphere" on merchandise belonging to citizens or subjects of other nationalities transported through such "sphere" than shall be levied on similar merchandise belonging to its own nationals transported over equal distances.

Responses of Powers to Secretary Hay's Letter. The replies of the Powers to this communication of the American Secretary were substantially as follows:

Great Britain replied on September 29, 1899, that its Policy in China, consistently advocated, had been "one of securing equal opportunity for the subjects and citizens of all nations in regard to commercial enterprise in China, that from this policy Her Majesty's Government had no intention or desire to depart." And, again, on November 30, that "Her Majesty's Government will be prepared to make a declaration in the sense desired by your [the American] Government in regard to the leased territory of Weihaiwei and all territory in China which may hereafter be acquired by Great Britain by lease or otherwise, and all spheres of interest now held or that may hereafter be held by her in China, provided that a similar declaration is made by other Powers concerned."

Germany replied, on February 17, 1900:

The Imperial Government has, from the beginning, not only asserted, but also practically carried out to the fullest extent, in its Chinese possessions absolute equality of treatment of all nations with regard to trade, navigation, and commerce. The Imperial Government entertain no thought of departing in the future from this principle, which at once excludes any prejudicial or disadvantageous commercial treatment of the citizens of the United States, so long as it is not forced to do so, on account of considerations of reciprocity, by a divergence from it by other governments.

Italy replied, January 7, 1900: "The Government of the King adheres willingly to the proposals set forth in the said [American] note of December 9."

Japan, December 26, 1899, replied that "The Imperial Government will have no hesitation to give their consent to so fair and just a proposal of the United States, provided that all the other Powers shall accept the same."

France, on December 16, declared that the Republic "desires throughout the whole of China and, with the natural reservation, that all the Powers interested give an assurance of their willingness to act likewise, is ready to apply in the territories which are leased to it, equal treatment to the citizens and subjects of all nations, especially in the matter of customs duties and navigation dues, as well as transportation tariffs on railways."

All of these replies substantially accepted Secretary Hay's proposal. The reply of Russia, December 18-30, was not quite so satisfactory. That Government declared:

Insofar as the territory leased by China to Russia is concerned, the Imperial Government has already demonstrated its firm intention to follow the policy of the "open door" by creating Dalny (Ta-lien-wan) a free port; and if at some future time that port, although remaining free itself, should be separated by a customs

limit from other portions of the territory in question, the customs duties would be levied, in the zone subject to the tariff, upon all foreign merchandise without distinction as to nationality. As to ports now opened or hereafter to be opened to foreign commerce by the Chinese Government, and which lie beyond the territory leased to Russia, the settlement of the question of customs duties belongs to China herself, and the Imperial Government has no intention whatever of claiming any privileges for its own subjects to the exclusion of foreigners. It is to be understood, however, that this assurance of the Imperial Government is given upon condition that a similar declaration shall be made by other Powers having interests in China.

In this reply of Russia it will be observed that only the question of customs is specifically covered, no mention being made of harbor dues and railway charges. However, in closing, the Russian note expresses the conviction that the reply is "such as to satisfy the inquiry made in the aforementioned [American] note," and that "the Imperial Government is happy to have complied with the wishes of the American Government."

In view of the replies thus received, and in order to make the commitments, if possible, more definite, Secretary Hay on March 20, 1900, addressed the following note to the American Ambassadors accredited to the Powers concerned:

Sir: The ———— Government having accepted the declaration suggested by the United States concerning foreign trade in China, the terms of which I transmitted to you in my instruction No. — of ———— and like action having been taken by all the various powers having leased territory or so-called "spheres of interest" in the Chinese Empire, as shown by the notes which I herewith transmit to you, you will please inform the Government to which you are accredited that the condition originally attached to its acceptance—that all other Powers concerned should likewise

accept the proposals of the United States—having been complied with, this Government will therefore consider the assent given to it by ———— as final and conclusive.

You will also transmit to the Minister of Foreign Affairs copies of the present enclosures, and by the same occasion convey to him the expression of the sincere gratification which the President feels at the successful termination of these negotiations, in which he sees proof of the friendly spirit which animates the various powers interested in the untrammeled development of commerce and industry in the Chinese Empire, and a source of vast benefit to the whole commercial world.

I am, etc., JOHN HAY.

Repeated Affirmations of the Open Door Policy. During the Boxer troubles, on July 3, 1900, Mr. Hay sent to all the Powers having treaty relations with China the following circular telegram:

In this critical posture of affairs in China it is deemed appropriate to define the attitude of the United States as far as the present circumstances permit this to be done. We adhere to the policy initiated by us in 1857, of peace with the Chinese nation, of furtherance of lawful commerce, and of protection of lives and property of our citizens by all means guaranteed under extraterritorial treaty rights and by the law of nations. . . . The policy of the Government of the United States is to seek a solution [of the existing troubles] which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly powers by treaty and international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese Empire.[2]

In the English-German treaty of October 16, 1900, the purpose of which was to define the mutual policy of the two nations in China, it was declared that the following principles would be observed:

[2] *U. S. For. Rels.*, 1900, p. 299.

(1) It is matter of joint and permanent international interest that the ports on the rivers and littoral of China should remain free and open to trade and to every other legitimate form of economic activity for the nationals of all countries without distinction; and that the governments agree on their part to uphold the same for all Chinese territory as far as they can exercise influence.

(2) Her Britannic Majesty's Government and the Imperial German Government will not, on their part, make use of the present [Boxer] complication to obtain for themselves any territorial advantages in Chinese dominions, and will direct their policy towards maintaining undiminished the territorial condition of the Chinese Empire.[3]

Here, it will be observed, is not only an undertaking mutually to abide by the open door policy, but, so far as possible, to maintain the territorial integrity of the Chinese Empire. It was further provided that the agreement should be communicated to the other Powers with the invitation to them to accept the principles recorded in it.

Secretary Hay, acknowledging the receipt of the text of this agreement, sent to the German and British representatives a note in which he said:[4]

When the recent [Boxer] troubles were at their height this Government, on the 3d of July, once more made an announcement of its policy regarding impartial trade and the integrity of the Chinese Empire and had the gratification of learning that all the Powers held similar views. And since that time the most gratifying harmony has existed among all the nations concerned as to the ends to be pursued, and there has been little divergence of opinion as to the details of the course to be pursued.[5]

[3] MacMurray, No. 1900/5.

[4] *U. S. For. Rels.*, 1900, p. 355.

[5] Continuing, Secretary Hay expressed the full sympathy of his Government with the principles set forth in the two sections of the German-

In 1901, as will later be referred to in connection with the development of Russian influence in Manchuria, the Japanese Minister to the United States informed the American Government that a then pending convention between China and Russia which would grant to the latter certain special mining privileges in Manchuria was deemed by the Japanese Government a violation of the understanding between the Treaty Powers with regard to the maintenance of the integrity of the Chinese Empire; and, with reference to the same proposed agreement the United States in a circular letter to the other Powers declared that it would view with concern any agreement by which China might cede to any corporation or company the exclusive right and privilege of opening mines, establishing railroads or in any other way industrially developing Manchuria—that such an agreement would constitute a distinct breach of the treaties between China and the Powers.

Affirmations of the Open Door Principle by Treaties Among the Foreign Powers. In treaties entered into by the Treaty Powers between one another, acceptance of the principle of the Open Door has been repeatedly affirmed.

English treaty which have been quoted. This agreement also contained the following section concerning which Secretary Hay said that the Government of the United States did not regard itself as called upon to express an opinion, as being merely a reciprocal arrangement between the two contracting Powers:

"3. In case of another Power making use of the complications in China in order to obtain under any form whatever such territorial advantages, the two contracting parties reserve to themselves to come to a preliminary understanding as to the eventual steps to be taken for the protection of their own interests in China."

In the Anglo-Japanese treaty of January 30, 1902,[6] it was declared in the preamble that the two Powers "actuated solely by a desire to maintain the *status quo* and general peace in the extreme East, being moreover specially interested in maintaining the independence and territorial integrity of China and the Empire of Korea, and in securing equal opportunities in those countries for the commerce and industry of all nations, hereby agree, etc."

In a joint declaration of March 3 (16), 1902, by France and Russia, in reply to the communication acquainting them with the Alliance, it was declared that the Anglo-Japanese treaty of January 30, 1902, having been received, the governments of France and Russia were " fully satisfied to find therein affirmed the fundamental principles which they have themselves, on several occasions, declared to form the basis of their policy and which still remain so."

However, the Convention continues:

> The two governments consider that the observance of these principles is at the same time a guarantee of their special interests in the Far East. Nevertheless, being obliged themselves also to take into consideration the case in which either the aggressive action of third Powers, or the recurrence of disturbances in China, jeopardizing the integrity and free development of that Power, might become a menace to their own interests, the two allied Governments reserve to themselves the right to consult in that contingency as to the means to be adopted for securing those interests.[7]

In the Anglo-Japanese agreement of August 12, 1905, replacing that of January 30, 1902, it was declared in the

[6] MacMurray, No. 1902/2.
[7] MacMurray, No. 1902/2 (note).

preamble that the object of the agreement included "the preservation of the common interests of all Powers in China by insuring the independence and integrity of the Chinese Empire and the principle of equal opportunities for the commerce and industry of all nations in China."[8]

Communicating this agreement to the Russian Government, September 6, 1905, the Marquis of Lansdowne said: "His [Britannic] Majesty's Government believe that they may count upon the good will and support of all the Powers in endeavoring to maintain peace in Eastern Asia and in seeking to uphold the integrity and independence of the Chinese Empire and the principle of equal opportunity for the commerce and industry of all nations in that country."

During the Russo-Japanese War the American Government became apprehensive that, at the conclusion of the war, concessions of Chinese territory might be made to neutral powers. It therefore sought to obtain assurances from these Powers that such concessions either of territory or of special privileges in conflict with the open door principle would not be sought. From the neutral Powers thus addressed the following replies were received:

The Austro-Hungarian Minister of Foreign Affairs said: "It gives gratification to the undersigned to state that the Imperial and Royal Government, in conformity with the views of the Government of the United States of America, has always had in mind both of these objects, the perpetuation of the integrity of China and policy of the open door in the Far East, and intends to observe this attitude also in future."

[8] *Id.*, No. 1905/6.

The Belgian Government declared that "within the limits of its interest in Chinese affairs it is fully in accord with the views thus expressed [by the United States]."

The German Chancellor declared that the American view "corresponds entirely with that of the German Government. . . . The Imperial Government does not seek for itself any further acquisition of territory in China."

Lord Lansdowne, in behalf of Great Britain, asserted "full concurrence" with the desires of America to maintain the open door and the integrity of China; and an equally reassuring statement was obtained from the Portuguese Minister of Foreign Affairs.

In the Portsmouth Treaty of Peace of September 5, 1905, between Russia and Japan, the two Powers declared, with respect to Manchuria, that they had no "territorial advantages or preferential or exclusive concessions in impairment of Chinese sovereignty or inconsistent with the principle of equal opportunity." And both Powers reciprocally engaged "not to obstruct any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria."[9]

In the convention between the same two Powers of July 30, 1907, it was declared:

ARTICLE I. Each of the High Contracting Parties engages to respect the actual territorial integrity of the other, and all rights accruing to one and the other party from treaties, conventions and contracts in force between them and China, copies of which have been exchanged between the contracting parties[10] (in so far as

[9] MacMurray, No. 1905/8.

[10] But not in all cases made known to the other Powers. See p. 322.

these rights are not incompatible with the principles of equal opportunity) of the Treaty signed at Portmouth on the 5th of September (23rd of August), 1905, as well as the special conventions concluded between Japan and Russia.

ARTICLE II. The two High Contracting Parties recognize the independence and territorial integrity of the Empire of China and the principle of equal opportunity, in whatever concerns the commerce and industry of all nations in that Empire, and engage to sustain and defend the maintenance of the status quo and respect for this principle by all the pacific means within their reach.[11]

In the Franco-Japanese "arrangement" of June 10, 1907, it was declared:

The Governments of Japan and France, being agreed to respect the independence and integrity of China, as well as the principle of equal treatment in that country for the commerce and subjects or citizens of all nations, and having a special interest to have the order and pacific state of things preserved especially in the regions of the Chinese Empire adjacent to the territories where they have rights of sovereignty, protection or occupation, engage to support each other for assuring the peace and security in those regions, with a view to maintain the respective situation and territorial rights of the two High Contracting Parties in the Continent of Asia.[12]

In the Root-Takahira agreement of 1908, embodied in an interchange of notes between the American Secretary of State and the Japanese Ambassador at Washington, it was declared:

It is the wish of the two Governments to encourage the free and peaceful development of their commerce on the Pacific Ocean.

2. The policy of both Governments, uninfluenced by any aggressive tendencies, is directed to the maintenance of the existing *status quo* in the region above mentioned, and to the defence of

[11] MacMurray, No. 1907/11. [12] *Id.*, No. 1907/7.

the principle of equal opportunity for commerce and industry in China.

3. They are accordingly firmly resolved reciprocally to respect the territorial possessions belonging to each other in said region.

4. They are also determined to preserve the common interest of all powers in China by supporting by all pacific means at their disposal the independence and integrity of China and the principle of equal opportunity for commerce and industry of all nations in that Empire.

5. Should any event occur threatening the *status quo* as above described or the principle of equal opportunity as above defined, it remains for the two Governments to communicate with each other in order to arrive at an understanding as to what measures they may consider useful to take.[13]

In the Russo-Japanese Convention of July 4, 1910, the contracting parties agreed to "maintain and respect the *status quo* in Manchuria resulting from the treaties, conventions and other arrangements concluded up to this day, between Japan and Russia or between either of those two Powers in China."[14]

The terms of the Anglo-Japanese Alliance were again modified by the treaty of July 13, 1911. In this instrument the purposes of the alliance are stated in the preamble as follows:

A. The consolidation and maintenance of the general peace in the regions of Eastern Asia and India.

B. The preservation of the common interests of all the Powers in China by insuring the independence and integrity of the Chinese Empire and the principle of equal opportunities for the commerce and industry of all nations in China.

C. The maintenance of the territorial rights of the High Contracting Parties in the regions of Eastern Asia and of India and the defense of their special interests in those regions.[15]

[13] MacMurray, No. 1908/19. [14] *Id.*, No. 1910/1.
[15] *Id.*, No. 1911/7.

In the Russo-Japanese Convention of 1916 no reference was made to the sovereignty and territorial integrity of China nor to the open door, the emphasis being laid on the "special interests" of the contracting Powers. After providing that neither party would become a party to any arrangement or political combination against the other, the convention, in its second article, declared:

> In case the territorial or special interests in the Far East of one of the Contracting Parties recognized by the other Contracting Party are menaced, Japan and Russia will act, in concert, on the measures to be taken in view of the support or co-operation necessary for the protection and defence of these rights and interests.[16]

Finally, in 1917, we have the understanding between America and Japan embodied in an interchange of notes between Secretary of State Lansing and the Japanese Ambassador, Viscount Ishii,[17] in which these representatives again pledged their governments "that they always adhere to the principle of the so-called Open Door or equal opportunity for commerce and industry in China," and that they have no purpose "to infringe in any way the independence or territorial integrity of China."

Open Door and Special Interests. In the chapters which follow it will be found that affirmance of the Open Door principle has not been deemed inconsistent with the establishment of spheres of interest—indeed it was the existence of these spheres which led Secretary Hay to urge upon the Powers the adoption of the principle—nor has it prevented the creation of what have been officially termed "special interests." Upon their face it would appear that these are contradictory ideas, and in fact,

[16] MacMurray, No. 1916/9. [17] MacMurray, No. 1917/12.

they have, in practice, proved to be such. The effort has, however, been made to harmonize them, and this has been only moderately successful when the Open Door principle has been held to relate only to matters of commerce and navigation. As thus defined it has nothing to do with non-alienation agreements with respect to particular areas, with the making of loans to China, or the obtaining of concessions for mining or for the building of railways or the construction and operation of other public works. Nor does it stand in the way of agreements with China that the material for these works shall be imported from particular countries. So far as the present writer is aware no official and authoritative definition of the term Open Door has been attempted beyond that contained in the Hay correspondence of 1899. Perhaps as satisfactory as any is the unofficial definition of Overlach. He says: "The 'open door' principle recognizes the 'vested rights' and 'special interests' within such spheres as long as a certain amount of opportunity for others is preserved, that is, as long as the Chinese treaty tariff is indiscriminately applied, as long as treaty ports are kept open and as long as no harbor dues or railroad charges are levied higher than those imposed upon subjects of the country in whose favor the 'sphere' exists. The principle is also more or less opposed to the acquisition of a monopoly in the supply of railway materials and rolling stock."[18]

The nature of the "special interests" of Japan in China, as recognized by the United States in the Lansing-Ishii agreement, will be discussed in Chapter XVI.

[18] *Foreign Financial Control in China*, p. vii.

Guarantees of China's Sovereignty and Territorial Integrity. From the quotations from diplomatic documents which have been made, it will have been seen that, coupled with the numerous affirmances by the Treaty Powers of their intention to abide by the principle of the open door in their dealings with China, have also gone repeated assurances of a purpose to respect the sovereignty and territorial integrity of China.

A promise to respect the sovereignty of a country does not necessarily commit a government to a policy broader than that of taking no action which will operate against the continued existence of the country in question as a sovereign and independent State. The promise to respect its territorial integrity goes further and involves the undertaking not to take or permit steps to be taken that may lead to the annexation of a portion of the territory of the State for whose benefit the promise is made. These two promises with regard to sovereignty and territorial integrity were not specifically mentioned in all of the original letters of Secretary Hay to the other Treaty Powers.[19] They were involved in the undertakings to which he sought to commit the Powers only in the sense that if China should cease to be a sovereign State there would of course be no real opportunity for the operation

[19] It was referred to in the letter sent to the American Ambassador at London to be submitted to the British Government. The following was the language: "This Government is animated by a sincere desire that the interests of our citizens may not be prejudiced through exclusive treatment by any of the controlling Powers within their so-called 'spheres of interest' in China, and hopes also to retain there an open market for the commerce of the world, remove dangerous sources of international irritation, and hasten thereby united and concerted action of the Powers at Peking in favor of the administrative reforms so urgently needed for strengthening the Imperial Government and maintaining the integrity of China in which the whole western world is alike concerned."

of the open door principle; or that, if a lease or sphere of interest ripened into actual political ownership by the State holding the lease or claiming the sphere, there would not be, as to the particular areas concerned, the basis of a claim upon the part of the other Powers that those nations should enjoy equally good treatment with the nationals of the State holding the lease or sphere as regards commercial and industrial rights.

It is, therefore, correct to say that the Treaty Powers have pledged themselves to a policy with regard to China that goes beyond that which Secretary Hay in his original proposal asked them to announce. So far as formal official pledges upon the part of the Powers is concerned, China's sovereignty and territorial integrity thus stand upon a peculiarly strong basis. From this point of view she will be able to present to the League of Nations a very strong case in the event that attacks from outside are made upon her continued sovereignty or upon her territorial integrity.

Significance to China of These Guarantees. But this important qualification with regard to China's continued independence needs to be noted. Even assuming the utmost good faith upon the part of the Treaty Powers, China cannot rely upon either her rights as a sovereign nation or upon the assurances of the other Powers to protect her against foreign control if her own public services become so demoralized as to furnish inadequate protection to the lives and property of foreigners in China or to the rights of persons trading with her merchants. International law recognizes, under certain circumstances, the right of one or of a number of States jointly to intervene in the

domestic affairs of another sovereign State, and the guarantees which the Powers have made cannot be counted upon to exempt her from the operation of this right of intervention if she presents those conditions within her own borders which, according to accepted principles of international law, justify foreign intervention. This would be true, if for no other reason, from the fact that the promises to respect her sovereignty and territorial integrity have, in every case, been made by the Treaty Powers *inter se* and not with China herself. She, therefore, technically speaking, cannot be said to have gained any contractual or conventional rights from or under them. The advantage which she derives from them is incidental in character, namely, that, if attacks upon her sovereignty or territorial integrity do come, there must be, unless the agreements are to be treated as "scraps of paper," concerted action upon the part of the Powers.

Upon this point it is also to be observed that the mutual promises which the Powers have made would lose a great deal of their operative force in cases in which the Chinese Government itself should consent, or appear to consent, to the annexation of a portion of her territory by another State. China will, therefore, be ill-advised if she does not bear constantly in mind the fate of Korea. That country had had its sovereignty guaranteed by several of the Powers, and especially and repeatedly, by Japan, and yet, when Japan exhibited to the world a document purporting to be a treaty signed by the Government of Korea consenting to annexation, the other Powers, even those which, like the United States, had promised to exert good offices in case other Powers should threaten it, did not feel called upon to go back of the formal instrument of

annexation in order to determine the circumstances under which it had been negotiated and the signatures to it obtained.[20]

Administrative Integrity of China. Administrative integrity is a concept quite distinct from that of territorial integrity: it refers to the right of a State to operate its own administrative services free from foreign dictation and control. In the pages which have preceded it will be noticed that in none of the undertakings entered into between the Treaty Powers with reference to China was there mention of China's administrative integrity. In fact, China has been obliged to submit to a considerable amount of foreign administrative control. Not to mention the fact, which will later appear, that her railroads have been built almost wholly with foreign capital, the loans of which have carried with them more or less operating control by those who have provided the moneys—control which in a number of cases has been for the purpose not so much of guaranteeing the security of the investments, as for political purposes, and as providing for the operation of the roads by corporations that, to all intents and purposes are not private concerns but direct agencies of the governments of the foreign Powers

[20] By Article I of the Treaty of Amity and Commerce of May 22, 1882, between the United States and Korea it was provided that "there shall be perpetual peace and friendship" between the rulers and citizens of the two countries, and that "if other Powers deal unjustly or oppressively with either Government, the other will exert their good offices, on being informed of the case, to bring about an amicable agreement, thus showing their friendly feelings." Relying upon this promise, the King of Korea appealed, but without avail, to the United States in 1905 at the time when Japan established her protectorate over his country. As to this, see especially the statement of H. B. Hulbert published in the *Congressional Record* of August 18, 1919.

concerned—in addition to this control, China has been obliged to place two of her most important revenue services—the salt tax or Gabelle, and the Maritime Customs—under the overhead administrative direction of foreigners. Also she has undertaken to appoint a Frenchman as the head of her postal system. China, still further, has been obliged to appoint a considerable number of foreigners as "advisers," civil and military, political, legal and administrative. These advisers have not been given powers of administrative control, but, in fact, in a number of instances, are able to exercise a considerable amount of directing authority. In other cases, however, these advisers have had little or no influence upon the government, their appointment being practically forced upon the Chinese Government which, though compelled to pay their salaries, has not been disposed to make any more use of their services than it has been compelled, by foreign pressure, to do. Especially during recent years the financial necessities of the Chinese Government have forced it to make loans, mostly from Japan, which have carried with them the right of the parties advancing the loans to exercise supervision and control in matters of banking, mining, forestry, and the like.

The United States has, in the past, sought to discourage invasions of the administrative integrity of China. In 1913, the American bankers were forced to withdraw from the financial "Consortium" which was then negotiating a large loan to China, because the American Government declared that these loans carried with them invasions of China's administrative integrity of which it disapproved. At the present time (1920), however, the American Government is taking the lead in an effort to

establish an international banking group which will have charge of all future public loans to China, and possibly, also, to take over a number of such loans already made; and it is practically certain that the expenditures of the moneys thus advanced will be controlled by the " Consortium " which, of course, will mean a considerable amount of administrative control in China. The truth is that so disturbed have been the domestic affairs of China since the Revolution of 1911, and so demoralized have her administrative services become, and so desperate her financial condition, that this foreign administrative control is imperative if China is to retain her sovereignty and peace and order are to be restored. Upon this point, more will be said in a later chapter. This one distinction, however, needs here to be made. The acceptance by, or the imposition upon, the Chinese people of foreign overhead administrative control does not necessarily involve the taking of the operations of the Government services out of the hands of the Chinese themselves. It merely means, or, at least, need mean no more than that a foreign supervision is permitted and the right given to those exercising it to prevent the expenditure of money or the taking of other action which, in their opinion, is in violation of the engagements which the Chinese Government have made or seriously prejudicial to the efficiency and honesty of the administrative services that are involved. Even should, in certain cases, these foreign supervisors be given the right to issue general orders which are required to be obeyed, the actual operation of the services could be left in Chinese hands.

CHAPTER X

Spheres of Interest—French, English and Russian

Since the time of the Nanking Treaty in 1842 until the Sino-Japanese War of 1894-1895, China had been repeatedly compelled, against her will, to cede to foreigners rights and privileges within her borders, and from time to time she had lost certain portions of her territory and been obliged to renounce her suzerain claims over certain dependencies. But these territorial losses had not been of a character really to endanger the continuance of China as a great sovereign power, and the rights which she had granted to foreigners were, with only a few exceptions, given without discrimination to the nationals of all the Treaty Powers.

Territorial Losses of China. By the Treaty of Nanking of 1842 China ceded the small island of Honkong to Great Britain, but this was of commercial benefit to her as well as to the other Powers, for it was immediately developed as a great free port open without discrimination to the ships of all nations.

By treaties with Russia entered into in 1858 and 1860 China parted with the immense area lying north of the Amur River and east of the Ussuri, thus giving Russia the seacoast down to the upper eastern corner of Korea. In 1884 (May 11) Annam was definitely lost by China to France. In 1885 and 1886 Indo-China was lost by her to France, and in the latter year, by the O'Connor Con-

vention, Burma passed under the complete control of Great Britain.[1]

In 1887 Macao, for all practical purposes, was annexed by Portugal.[2]

By the treaty of Shimonoseki[3] which concluded the Sino-Japanese War, China lost to her victorious foe the great island of Formosa and the Pescadores group of islands, and also the Liaotung Peninsula. This last, however, as is well known, was retroceded to her by Japan[4] acting under pressure from Russia, Germany, and France, only to be leased a few years later to Russia.[5] In addition, China was forced to renounce all claims of suzerainty over Korea.

These were considerable territorial losses, but they did not endanger the sovereignty nor make serious inroads upon the territorial integrity of China proper, that is, of the Eighteen Provinces and Manchuria. Within this vast territory over which the Peking Government had full sovereign rights, rather than vague suzerain claims, China had been obliged to grant to foreigners extraterritorial and other rights, but it was of great advantage to her that these rights were, in general, possessed without

[1] In this Convention China agreed that "in all matters whatever appertaining to the authority and rule which England is now exercising in Burma, England shall be free to do whatever she deems fit and proper." Sikkim also went to England in 1890.

[2] By the Lisbon Protocol of March 26, 1887, China recognized the perpetual occupation and government of Macao by the Portuguese. Boundary matters have, however, continued to the present time to furnish a subject for dispute between China and Portugal. Macao had first been occupied by the Portuguese in the sixteenth century. In 1840 they refused to continue paying rent to the Chinese and drove out Chinese taxing and other authorities.

[3] MacMurray, No. 1895/3.

[4] *Id.*, No. 1895/10.

[5] *Id.*, No. 1898/5.

discrimination by the nationals of all the Treaty Powers. The only exceptions to this rule were with regard to certain special privileges which France had been able to obtain in the south by the Treaty of Tientsin of June, 1885; some concessions and promises to counteract the French privileges, which Great Britain had secured in the Yangtze Valley, and some special rights secured by Russia with reference to trade across the border between Manchuria and Siberia.

Following the exhibition of her weakness in the Sino-Japanese War, however, events took a decided change for the worse for China, and especially were the years 1898 and 1899 disastrous for her. It was not simply, as we have already seen, that China was obliged during these two years, under the form of leases, to part with actual administrative and political control of areas of great strategical importance, but that she found herself obligated to give formal recognition to the claims advanced by certain of the Treaty Powers to preferential treatment as regards railway and mining concessions within specified portions of her national territory. Thus, in effect, the greater part of China became marked into what have come to be known as Spheres of Interest. It is, therefore, no wonder that it seemed to many at the time that the "Breakup of China" was impending, and that there was to be a scramble among the leading Treaty Powers to divide the helpless Empire among themselves, with what resulting quarreling and possible wars, between those participating or refused participation in the division, no one could foresee but all could apprehend.

That thus was furnished abundant opportunity for friction between the Powers which, even if it did not lead to war, might result in mutually discriminatory action that would be commercially costly to all concerned, was evident. In the preceding chapter we have already traced the attempt that was made, America taking the lead, to obtain formal reciprocal pledges from the Powers that held leases and claimed spheres of interest in China, that they would respect the sovereignty and territorial integrity of China and grant to the nationals of all the Powers equal opportunities for trade and commerce within their spheres or leased areas. And, in later chapters, we shall consider how far the engagements thus entered into have been carried out by the different nations either in the letter or the spirit. We shall also find it necessary to examine the "Special Interests" of certain countries as, for example, Russia in North Manchuria, and Japan in South Manchuria and Shantung, to see in what respect these interests are distinguishable from the privileges claimed in the "Spheres of Interest" and to what extent they may be harmonized with the principle of the "Open Door." In the present chapter, however, we shall confine our attention to the Spheres of Interest claimed in China by the different Powers.

Spheres of Interest and Spheres of Influence Defined. The term "sphere of influence" is not infrequently, but never officially, it is believed, employed in China as synonymous with the term "sphere of interest." This latter term is certainly to be preferred, but in some respects it is unfortunate that either expression should

have found currency in China, for, as here applied, they both carry with them connotations quite different from those that are usually attached to them by international law writers. In China it will be found that a sphere of interest has only an economic, or, at the most, only a quasi or incidentally political meaning, whereas this expression, as well as that of sphere of influence, has a decidedly political signification when applied to regions in other parts of the world and especially in Africa. Thus, for example, Cobbett writes:

> A Sphere of Influence so far as it can be said to possess a definite meaning, indicates a region, generally inhabited by races of inferior civilization, over which a State seeks, by compact with some other State or States that might otherwise compete with it, to secure to itself an exclusive right of making future acquisitions of territory (whether by annexation or by the establishment of protectorates), and, generally, also, the direction and control of the native inhabitants.[6]

It will clearly appear that, as thus defined, the term Sphere of Influence has no application in China. In the first place, it will appear that the starting points of the Spheres of Interest in China (not of Influence) have been agreements with China herself, in which she has promised not to alienate to a foreign power the areas concerned. In the second place, these agreements have not been predicated upon the idea that the Chinese are a race of inferior civilization. In the third place, the Powers concerned have never claimed, overtly at least, an exclusive right of making future acquisitions of territories within their respective spheres. Should the breakup of China ever occur, it is not unlikely that the Powers possessing

[6] *Cases and Opinions on International Law*, Vol. I, Peace, p. 113.

Spheres of Interest would, among themselves, claim a preferential right to make annexations within their respective spheres.

Under the rubric "Spheres of Interest," Cobbett says:

"Somewhat different [from Spheres of Influence] as regards their object are those agreements which allocate certain areas already occupied by States more or less civilized as spheres of influence or interest between Powers, having already interests adjacent thereto; although the line between these and the former is sometimes difficult to draw." As instances, Cobbett cites the agreement of 1896 between France and Great Britain with respect to Siam, and in 1904 with respect to Egypt and Morocco; and also the agreement between Great Britain and Russia made in 1899 with regard to certain regions in China.[7]

Here also, it will appear that the definition does not apply to Spheres of Interest such as are found in China.

It is apparent also that to W. E. Hall, the idea of a sphere of influence or of interest—he does not distinguish between the two terms—as known to international law has no application to countries like China but only to uncivilized States and especially to those of Africa.[8]

The term Sphere of Influence, he says, "indicates the regions which geographically are adjacent to or politically group themselves naturally with, possessions or protectorates, but which have not actually been so reduced into control that the minimum of the powers which are implied in a protectorate can be exercised with tolerable regularity. It represents an understanding

[7] See *post*, p. 283.

[8] See also Moore, *Digest of International Law*, I, 269, and Lawrence, *International Law*, Sec. 81.

which enables a State to reserve to itself a right of excluding other European powers from territories that are of importance to it politically as affording means of future expansion to its existing dominions or protectorates, or strategically as preventing civilized neighbors from occupying a dominant military position."[9]

Westlake gives us the best examination of the subject. This discussion, which he gives under the heading "Spheres of Influence or Interest," he divides under two sub-heads: "Agreements for Reciprocal Abstention from Territorial Expansion," and "Agreements not to Alienate Territory," and it is under this second sub-head that he refers to the situation in China.

In the case of China, as has been already said, the Spheres of Interest so far as they have a treaty or other conventional origin, are based upon agreements between China and the individual Powers, which treaties have, *ex proprio vigore,* no binding force upon other Powers, except such as becomes later attached to them by reason of long continued tacit or explicit acquiescence upon the part of the other Powers. In some cases, however, as will presently be seen, there have been agreements entered into between certain of the Treaty Powers in which they have defined and mutually agreed to recognize determinate territorial spheres of interest in China claimed by each.

Implications of Sphere of Interest. In substance the Powers laying claim to these spheres have sought to establish the following implications:

(1) The guarantee on the part of China that the areas in question will not be alienated to any foreign Power.

[9] *International Law,* 5th ed., 129.

(2) The understanding, more or less definite and explicit, that the Power, or its nationals, claiming the sphere shall have preferential or, in some matters, practically exclusive rights, with regard to the making of loans, the constructing of railways, the opening and operating of mines, and the carrying out of public enterprises, such as conservancy works, etc. In some cases, also, it has been sought to have it accepted that in the employment of "advisers" or other scientific experts, nationals of the Power in question should be preferred. These desired implications have in some cases received more or less explicit statement in certain of the treaties with China, especially in those with France relating to rights in Yunnan and Kwangsi, and those with Japan relating to South Manchuria. The Treaty Powers, however, have never accepted the general principle that a claim to a Sphere of Interest necessarily implies a right to such preferential, and certainly not to exclusive treatment.

Especially important in these Spheres has been, and is, the matter of railway construction and operation and the opening up and operating of coal and iron mines. With regard to constructing and operating railways it will be found that important differences have distinguished the various "concessions" which have been granted. In some cases these grants have carried with them only financial interests; in others, there have been important political implications. Especially has this been true in those cases in which the railways have been operated by companies which, though nominally private concerns, have in fact been direct agencies of the governments creating them. This, it will appear, has

been true of the Russian and Japanese railways in Manchuria (The Chinese Eastern Railway and the South Manchuria Railway), the German railways in Shantung, and the French railway from Indo-China into the Province of Yunnan. In these cases the " railway areas " have constituted virtual *imperia* within the *imperium* of China. In other railway concessions the control exercised by those advancing the funds, aside from guarantees for their repayment, has included rights of supervision of construction and operation, and preference in the supply of material.

One general feature regarding these concessions is that, though granted to private parties, their respective Governments have, in practically all cases, given to them their active diplomatic support, and, what is perhaps still more important, these Governments usually have taken the ground that if, for any reason, the concessionaires surrender or forfeit their rights, China is obligated, if the concession is again made, to offer it to others of their nationals before offering it to citizens of another Treaty Power. In other words, the position is taken that the right having been originally granted at the solicitation of the Chancellery of a nation, that nation has, as it were, a vested interest in the grant.

These explanations having been made, we are now prepared to consider under separate heading the several " Spheres of Interest " which certain of the Powers have managed to build up for themselves in China.

French Sphere. The French Sphere of Interest lies wholly in the south and borders France's Indo-Chinese colonial possessions.

By a declaration of March 15, 1897,[10] China promised France that, attaching great importance to the island of Hainan, it would never be "alienated or ceded by China to any other foreign Power, either as final or temporary cession, or as a naval station or coaling depot."

Before this time, in 1884, France had promised China in the Fournier Convention to protect the southern frontier of China against attacks from any other nation, and in a treaty of the next year China had agreed to apply to the French for materials in case she should construct railways in that region.[11]

It will be seen that by this treaty of 1885 France made the first breach in the principle of equal opportunity for commercial penetration of China that had previously prevailed, and it will also be seen that this, in turn, led Great Britain to obtain assurance of her preferential position in the Yangtze Valley.

In 1895 by a treaty signed at Peking on June 20 between France and China[12] it was provided that "Chinese goods in transit from one or the other of the four towns open to commerce on the frontier, Lungchou, Mengtse, Ssumao and Hokou, in passing through Annam, will pay on leaving, duties reduced by four-tenths"; and also that "Chinese goods exported from the four above-named locations and transported to Chinese maritime or river ports, open to commerce, shall pay on passing the frontier export duty reduced by four-tenths. A special certificate will be delivered setting forth the payment of this duty, and destined to accompany the goods. When they shall arrive at one of the maritime or river ports

[10] MacMurray, No. 1897/2.
[11] See treaty of 1885.
[12] *Id.*, No. 1895/5.

open to commerce, they shall pay the half re-importation duty in conformity with the general rule for all goods of like nature in the maritime or river ports open to commerce."

Chinese goods transported from Chinese maritime or river ports open to commerce, by way of Annam, towards the four above-named localities, shall pay on crossing (the frontier) full duty. A special certificate will be delivered, setting forth the payment of this duty, and destined to accompany the goods. When they shall arrive at one of the frontier customs stations they shall pay on entry half re-importation duty based on the reduction by four-tenths.

By Article V of this treaty it was further provided that:

It is understood that China, for the exploitation of its mines in the provinces of Yunnan, Kwangsi, and Kwantung, may call upon, in the first instance, French manufacturers and engineers, the exploitation remaining nevertheless subject to the rules proclaimed by the Imperial Government as regarding national industries. It is agreed that railways either those already in existence, or those projected in Annam, may, after mutual agreement, and under conditions to be defined, be continued on Chinese territory.[12]

These undertakings on the part of China were more explicitly defined in identic notes of June 12, 1897,[13] which were also in explanation of a railway contract which had been entered into between the two countries on June 5, 1896. These notes caused it to be understood that as soon as the railway from Dongdang to Lungchou was finished a request would be made to continue it in the direction of Nanning to Pese. "It is understood, furthermore," the notes declare, " that the right will be conceded to construct a railway communication between

[12] MacMurray, annex to No. 1895/5.

the Annam frontier and the provincial capital, either by way of the Pese River region, or by that of the upper Red River."

By an exchange of notes between the French Minister and the Foreign Office in China on April 10, 1898,[14] France obtained the assurance from the latter that none of the provinces bordering on her frontiers should ever be ceded to any other Power. This assurance ran as follows:

> Our Yamen considers that the Chinese provinces bordering on Tongking, being important frontier points which interest her in the highest degree, must always be administered by China and remain under her sovereignty. There is no reason that they should be ceded or leased to any Power.

China also agreed at this same time to lease to France the Bay of Kuangchouwan; to organize a definite postal system with a high functionary at its head, aided by foreign staff officers for whose appointment account was to be taken of the recommendations of the French Government; and the following railway concession:

> The Chinese Government grant to the French Government, or to the French Company, which the latter may designate, the right to make a railway from the frontier of Tonking to Yunnanfu; the Chinese Government having no other responsibility but to furnish land for the road and its dependencies. The route of this line is actually surveyed and will be fixed later on in agreement with the two governments. Regulations will be jointly made.

The actual lease of Kuangchouwan Bay was effected, as has been pointed out in an earlier chapter, by the Convention of May 27, 1898.[15] By Article VII of this Convention—

[14] MacMurray, No. 1898/6. [15] *Id.*, No. 1898/10.

The Chinese Government authorizes France to construct a railway connecting a point on the Bay of Kuangchouwan, by Leichou, with a point to be designated on the west coast of Leichou, in the neighborhood of Onpu. This point shall be precisely designated later on. China will give the land, but the expense of building and working shall be borne by France. Chinese shall have the right to travel and trade on the railway in accordance with the general tariff in force. The Mandarins must see to the protection of the railway and the stock, but the repairs and maintenance of said road and its stock shall be at the expense of France.

By Article VIII it is also provided that France shall have the right at the end of the line about Onpu to build landing stages, wharves, storehouses and hospitals, place buoys, lights, etc. "The nearest deep water anchorage to this terminus (territorial waters) shall be exclusively reserved for French and Chinese ships of war, those of the latter nationality only when neutral."

At this same time (May 28, 1898), France obtained the assurance of the Chinese Government that only the French or the Franco-Chinese Company should be given the privilege of constructing railways having Pakhoi as their starting point.[16]

It will not be here necessary to consider the railway construction that has actually been carried out under these concessions, but with regard to the character of the

[16] This assurance was in response to the following communication which the French Minister at Peking was directed by his Government to present to China: "The recent reports of our consular agents show the interest we have in developing means of access (voies de pénétration) in the region of Kuangtung and Kuangsi which borders the Gulf of Tongking. Be good enough to ask the Chinese Government for the concession, to a French company, of a railway destined to connect the port of Pakhoi with a point to be fixed upon on the course of the West River: such concession to be made on lines of the contract entered into in June, 1896, for a railway from Dongdang to Lungchow."

"control" provided for in the financial arrangements that were made for the building of the principal railway — the Laokai-Yunnanfu line — under French auspices and within the French Sphere we may quote the following summary of the London *Times* of November 20, 1903, which Rockhill gives:[17]

China retains full sovereign rights over the line, which in the event of China's being at war will not be considered neutral, but be placed under Chinese orders. China undertakes the sole responsibility for policing and protecting the railway, and on no account can the railway ask for the assistance of foreign troops. The general superintendent, the deputy superintendent, and the technical staff may be French, the final decision on all technical matters being vested in the general superintendent. China grants all government land free, but private property must be purchased. The railway gives the facilities desired by China for the carriage of Imperial mails and safeguards all geomantic prejudices. There is to be no Chinese Government guarantee; the period of the concession is eighty years.

Commenting upon these conditions, Overlach says:[18]

The Chinese have nothing whatsoever to do with financing or managing of the line and they are deprived of all control and profit. In this latter respect French railway rights in China are at variance with those enjoyed by Russia in Manchuria, for Russia . . . had admitted the Chinese to financial and even administrative participation—at least nominally. But otherwise, there is little distinction between French and Russian "control"; although French "control" is nominally exercised by a private company and is therefore financial, the close association of this company with the

[17] P. 405, note. This line was provided for by the Convention of April 9, 1898, the conditions governing its construction and operation being determined by an agreement with the Chinese Government of October 29, 1903, for a translation of which see MacMurray, No. 1903/6.

[18] *Foreign Financial Control in China*, p. 130.

French Government as manifested in the several conventions as well as the motives behind French railway enterprise in Yunnan, leave no room for doubt that French control in China, embodied in this French railway concession, is, in spirit, somewhat political.

Nevertheless (Overlach adds) French policy in China proper has been by no means as aggressive as that of Russia before the Russo-Japanese War. With the exception of a few unsuccessful attempts at further concessions in the southern provinces, which were to be extensions of the existing railway system, France did little in exploiting her sphere politically. Commercially, however, France took full advantage of her privileged position: her control enabled her to establish her trade at the expense of other nations by means of preferential tariffs to the furtherance of French commerce.

British Sphere. To counterbalance the growing influence of Russia in Manchuria, of the Germans in Shantung, and of the French in the South, Great Britain sought and obtained from the Chinese Government a non-alienation promise with regard to the Yangtze Valley. This assurance was given in the form of a note from the Tsungli Yamen to the British Minister, dated February 11, 1898,[19] and ran as follows:

> The Yamen have to observe that the Yangtze region is of the greatest importance as concerning the whole position (or interests) of China, and it is out of the question that territory (in it) should be mortgaged, leased, or ceded to another Power. Since Her Britannic Majesty's Government has expressed its interest (or anxiety) it is the duty of the Yamen to address this note to the British Minister for communication to his Government.

Starting from this slender basis of a promise by China to herself that the Yangtze basin would never be leased or ceded to any other Power, that is, to any other Power

[19] MacMurray, No. 1898/1.

than China, Great Britain has built up for herself a claim to special consideration with regard to the granting of railway or other concessions in this region. She therefore vigorously protested the granting to a Belgian syndicate (representing undoubtedly French and Russian interests) of a concession for the building of the important railway line from Peking to Hankow. When, notwithstanding her protests, the final contract was signed, the Chinese Government was informed that Great Britain felt that she had not been properly treated and that, therefore, she " now demanded from the Chinese Government the right to build the following lines upon the same terms as those granted in the case of the Belgian line: Tientsin to Chinkiang (to be shared, if desired, with the Germans and Americans), Honan and Shansi, Pekin Syndicate lines to the Yangtze; Kowloon to Canton; Pukou to Sinyang; Soochow to Hangchow, with extension to Ningpo."

It was also pointed out that it was considered that the lines from Shanghai to Nanking and Shanhaikuan to Newchwang had already been definitely promised to Great Britain.[20]

Anglo-Russian Agreement of 1899. Something very much like an ultimatum was issued to the Chinese in connection with these demands and China at once yielded. The railway concessions thus promised covered a total of some twenty-eight hundred miles of road, lying within ten of China's Provinces. Great Britain also undertook, shortly after, to finance the line to be constructed between

[20] China, No. 1, 1899, Vol. c. IX, No. 382. Quoted by Overlach, *op. cit.*, p. 32.

Peking and Newchwang, thus entering a territory which Russia claimed was her special sphere. This led to correspondence between the two governments which finally resulted in the signing of the important Anglo-Russian Agreement of April 28, 1899,[21] according to which the two countries defined their respective "spheres" and agreed mutually to respect the rights of each therein. This agreement known as the Scott-Mouravieff agreement, embodied in an exchange of identic notes, read as follows:

Great Britain and Russia, animated by a sincere desire to avoid in China all cause of conflict on questions where their interests meet, and taking into consideration the economic and geographical gravitation of certain parts of that Empire, have agreed as follows:

1. Great Britain engages not to seek for her own account, or on behalf of British subjects or of others, any railway concessions to the north of the Great Wall of China, and not to obstruct, directly or indirectly, applications for railway concessions in that region supported by the Russian Government.

2. Russia, on her part, engages not to seek for her own account, or on behalf of Russian subjects or of others, any railway concessions in the basin of the Yangtze and not to obstruct, directly or indirectly, applications for railway concessions in that region supported by the British Government.

The two Contracting Parties, having nowise in view to infringe in any way the sovereign rights of China or existing Treaties, will not fail to communicate to the Chinese Government the present arrangement, which, by averting all cause of complications between them, is of a nature to consolidate peace in the Far East, and to serve the primordial interests of China herself.[22]

[21] MacMurray, No. 1899/3.

[22] In supplementary notes of the same date it is declared that the main understanding is not to be deemed as infringing the agreement already arrived at with regard to the railway line from Shanhaikuan to Newchwang for the construction of which a loan had already been contracted

Prior to this, Great Britain and Germany had come to an understanding with regard to the rights of the former in the Yangtze Valley and of the latter in Shantung. At the time that she obtained the lease to Weihaiwei, Great Britain had assured Germany, that, by taking this step, she had "no intention of injuring or contesting the rights and interests of Germany in the province of Shantung, or of creating difficulties for her in that province. It is especially understood that England will not construct any railroad communication from Weihaiwei and the district leased therewith into the interior of the Province of Shantung."[23]

Now, at meetings held in London, September 1 and 2, 1898, a general understanding was reached between the

for by the Chinese Government with the Hongkong and Shanghai Bank acting on behalf of the British and Chinese corporation. The note continues:

"The general arrangement established by the above-mentioned notes is not to infringe in any way the rights acquired under the said loan contract, and the Chinese Government may appoint both an English engineer and a European accountant to supervise the construction of the line in question, and the expenditure of the money appropriated for it.

"But it remains understood that this fact cannot be taken as constituting a right of property or foreign control, and that the line in question is to remain a Chinese line, under the control of the Chinese Government, and cannot be mortgaged or alienated to a non-Chinese company.

"As regards the branch line from Siaoheishan to Sinminting, in addition to the aforesaid restrictions, it has been agreed that it is to be constructed by China herself, who may permit European—not necessarily British—engineers periodically to inspect it, and to verify and certify that the work is being properly executed.

"The present special agreement is naturally not to interfere in any way with the right of the Russian Government to support, if it thinks fit, applications of Russian subjects or establishments or concessions for railways, which, starting from the main Manchurian line in a southwesterly direction, would traverse the region in which the Chinese line terminating at Sinminting and Newchwang is to be constructed."

[23] Rockhill, p. 180: MacMurray, No. 1898/14 (note).

British and German interests regarding railway construction in China. This understanding was embodied in minutes of the meeting, signed by representatives of the German Syndicate, the British and Chinese Corporation, Ltd., and the Hongkong and Shanghai Banking Corporation.[24]

It was proposed by the representative of the German Syndicate, Mr. von Hansemann, that the British and German Spheres of Interest "for applications for railway concessions in China" be as follows:

1. British Sphere of Interest, viz.—The Yangtze Valley, subject to the connection of the Shantung lines to the Yangtze at Chinkiang; the provinces south of the Yangtze; the province of Shansi with connection to the Peking-Hankow line at a point south of Chengting and a connecting line to the Yangtze Valley, crossing the Hoangho Valley.

2. Germany Sphere of Interest, viz.—The Province of Shantung and the Hoangho Valley with connection to Tientsin and Chengting, or other point of the Peking-Hankow line in the south with connection to the Yangtze at Chinkiang or Nanking. The Hoangho Valley is understood to be subject to the connecting lines in Shansi forming part of the British Sphere of Interest, and to the connecting line to the Yangtze Valley, also belonging to the said Sphere of Interest.

This proposal was agreed to with the following alterations, viz:—

The line from Tientsin to Tsinan, or another point of the northern frontier of the Province of Shantung, and the line from the southern point of the Province of Shantung to Chinkiang to be constructed by the Anglo-German Syndicate (meaning the German Syndicate on the one part, and the Hongkong and Shanghai Bank-

[24] These were the institutions enjoying governmental support for financing railway concessions in China.

ing Corporation and the British and Chinese Corporation, Limited, on the other part) in the following manner, viz.—

1. The capital for both lines to be raised jointly.

2. The line from Tientsin to Tsinan or to another point on the northern frontier of the Province of Shantung to be built and equipped and worked by the German group.

3. The line from the southern point of the province of Shantung to Chinkiang to be built and equipped and worked by the English group.

4. On completion the lines to be worked for joint account.[25]

After describing the various conditions under which the railways in China built by British interests were constructed and are now operated Mr. Overlach says:

On the strength of the foregoing analysis we now draw the conclusion that British control in China consists of nothing more than safeguards for the protection of the bondholders and bankers, guaranteeing proper loan fund expenditure and adequate return. British control in China, exercised exclusively by private corporations, is therefore essentially financial and non-political. Its non-political character may be further illustrated by the fact that the syndicate, in spite of its monopolistic rights, admitted non-British interests to participation in its privileges within the British sphere.[26]

Attempted invasion of the British Sphere by Japan in connection with the Twenty-one Demands of 1915 will be later discussed.

Russian Sphere — Manchuria. The vast stretch of territory to the north, known as Manchuria and embracing nearly four hundred thousand square miles has been an

[25] The text of these Minutes is given by Millard, *Our Eastern Question*, Appendix I, p. 444. See also "China," No. 1, 1899, Vol. CIX, No. 312; and Overlach, *op. cit.*, p. 36. MacMurray, No. 1900/5 (note).

[26] *Op. cit.*, p. 60.

integral part of China since the middle of the seventeenth century when the Manchu dynasty mounted the Dragon Throne. Since that time, so great has been the Chinese emigration thither, especially during recent years, the population is now predominantly Chinese.[27] The region is, however, not densely settled, having a population of less than fifteen millions. It is a region containing great natural resources—vast amounts of excellent agricultural lands, great areas of fine forests, and rich deposits of coal, iron and other minerals.

Until 1907, Manchuria had an administrative status in the Chinese Empire different from that of the old Eighteen Provinces, but in that year was divided into the three so-called Eastern Provinces of Heilungchiang, Kirin and Fengtien (Sheng King) and these provinces given a government and status substantially similar to that of the other provinces of the Empire.

For the purposes of the present study it will be necessary to consider briefly the events in Manchuria prior to the Russo-Japanese War of 1904-1905, because the claims of Russia in this region throw considerable light upon the claims that have later been made by Japan as successor to the Russian rights in South Manchuria, and

[27] "Manchuria is as purely Chinese as the Yangtze Valley." This is the statement of Mr. Putnam Weale in 1904, *Manchu and Muscovite*, Preface. The Manchu language has practically disappeared and "Mandarin" Chinese taken its place. Mr. Weale, p. 539, says: "Considering that the Manchu alphabet was non-existent until the beginning of the seventeenth century, and that it was merely invented by crudely changing the Mongol style of writing, that the Manchus were the very rudest people until they became civilized through contact with the Chinese, and that the five hundred books in the Manchu language are merely imperfect translations of Chinese originals, it will be readily understood how soon the Manchus lost all knowledge of their own language."

also significance attaches to the purposes alleged by Japan for declaring war.[28]

The annexation by Russia of the Amur region and the Coast down to Korea (the Maritime Provinces) by the treaties of 1858 and 1860 has already been mentioned. That Russia desired to bring, and if she had not been prevented, would have brought, all of Manchuria under her own effective administrative control, if not under her avowed sovereignty, and without regard to her repeated promises to Japan as well as to China, is without doubt.[29]

It will be remembered that in 1895 Japan, under pressure from Russia, France and Germany, was obliged to retrocede to China the Liaotung Peninsula. In addition to the benefit to China thus secured, in part, through Russia's action, the Russian Ministry of Finance in 1895 guaranteed the loan to China of 400,000,000 francs which was issued mostly at Paris and which had for its purpose the payment, in part, of China's indemnity to Japan.[30]

Cassini Convention. On March 27, 1896 there was published in the *North China Daily News*, at Shanghai, what

[28] In K. Asakawa's *The Russo-Japanese Conflict*, published in 1904, will be found an excellent, and upon the whole, an objective presentation of the negotiations between Japan and Russia prior to the war.

[29] "In her descent on Asiatic waters Russia has been impelled neither by the need of extended territory nor by the desire for commercial relations with other countries. Indeed Russia's trade with China was and is insignificant and consists mainly of importing articles of Chinese manufacture into Russia, notably tea, silks and drugs. Her ambitions were political and her absorptions have been prompted partly by a craving for a seaboard, partly by a political instinct of expansion, and partly by the personal ambitions of a few statesmen." Overlach, *Op. cit.*, p. 70.

[30] The remainder of the indemnity was met by Anglo-German loans. For text of loan agreement and of contract of guarantee, see MacMurray, Nos. 1895/6 and 1895/7.

purported to be the text of an agreement that had been entered into between Russia and China. In the October 30, 1896, issue of the *North China Herald* also was given the text of this alleged agreement.[31] It has never been admitted by the parties directly concerned that this agreement, which has come to be known as the "Cassini Convention" was entered into, and, as will presently be shown, there is good reason for believing that there never was such a convention signed. Inasmuch, however, as this supposed document has been much discussed, and, because most of the promises alleged to be contained in it were, in fact, soon given effect to, there is justification for reproducing the following summary of its terms.

The object is declared to be the facilitating of transport of goods between the two Empires and the strengthening of the frontier defences and seacoast. The consideration for the special privileges granted by China is declared to be the loyal aid given by Russia in the retrocession of Liaotung and its dependencies.

1. China consents to the prolongation of the Russian Trans-Siberian Railway across her northern territory to the Russian port of Vladivostock.

2. All railways built by Russia in Chinese territory are to be constructed at the sole expense of Russia, and Russia is to have entire control of them for thirty years, at the expiration of which period China is to be allowed to redeem them together with rolling stock, machine shops and other buildings.

3. If China is obliged to borrow money to complete her projected railways from Shanhaikuan to Mukden, Russia shall be allowed to loan the amounts needed.

[31] Reprinted in MacMurray, No. 1896/5 (note).

4. The railways to be built by China from Shanhaikuan to Newchwang to Chinchow to Port Arthur and to Talienwan and their dependencies shall follow Russian railway regulations in order to facilitate commercial intercourse between the two Empires.

5. Because of the sparsely inhabited Chinese territories through which the Russian railway will pass and the consequent difficulty on the part of China to furnish adequate police protection, Russia shall be allowed " to place special battalions of horse and foot soldiers at the various important stations for the better protection of the railway property."

6. Customs duties collected on goods exported and imported on the railways are to be according to the Russo-Chinese treaty of commerce of February 20, 1862 [O. S.]

7. Russians and Chinese shall be permitted to exploit and open any of the mines in Northern Manchuria, but shall first obtain the necessary permits from the Chinese local authorities in accordance with the mining regulations in China proper.

8. Should China in the future decide to reform in accordance with the Western system the whole army organization of the three Manchurian—or Eastern—Provinces, she shall be permitted to engage Russian military officers for the purpose.

9. China is to lease to Russia, as an ice-free port, the harbor of Kiaochow for a period of fifteen years. However, until there is danger of military operations, Russia is not to enter into possession—this in order not to excite the jealousy and suspicions of other Powers.

10. Port Arthur and Talienwan being important stra-

tegical points, China is to fortify them with all haste, Russia lending all necessary assistance. China shall not permit any foreign Power to encroach upon these points, and obligates herself never to cede them to another Power. "If, in future, the exigencies of the case require it, and Russia should find herself suddenly involved in a war, China consents to allow Russia temporarily to concentrate her land and naval forces within the said ports in order the better to enable Russia to attack the enemy or to guard her own position."

The Li Hung Chang-Lobanoff Treaty of Alliance of 1896 between China and Russia. Cordier in his *Histoire des Relations de la Chine,* published in 1901, pointed out that there was internal evidence to show that the alleged Cassini Convention was a composite of two documents—one relating to a Manchurian railway and the other to the port of Kiaochow and other matters. It is now pretty clear that one of these documents was a treaty of military alliance entered into between China and Russia in May, 1896, which had been negotiated with Prince Lobanoff by Li Hung Chang while in Moscow,[32] the text of which was first made known to the public in the London *Daily Telegraph* of February 15, 1910.[33] M. A. Gérard, French minister to China from 1893 to 1897 in his recently (1918) published volume *Ma Mission en Chine,* confirms this.[34]

[32] Ostensibly to attend the coronation ceremonies of Czar Nicholas.

[33] MacMurray, No. 1896/5 (note).

[34] Pp. 135-148. Concluding his account of this matter, M. Gérard says (p. 147): "Ces divers textes, auxquels la presse anglaise donnait le nom de 'la convention Cassini,' etaient apocryphes. Ils confondaient le traité d'alliance proprement dit et le contrat du chemin de fer. Selon

This treaty of alliance of May 1896 provided that every aggression directed by Japan, whether against Russian territory in Eastern Asia or against Chinese territory or Korea should bring about an application of its terms; in which case the two Powers would support each other with all their land and sea forces, and that no treaty of peace would be entered into by the one party without the assent of the other; and that, to facilitate the access of Russian land forces to the menaced points, Russia might extend her Trans-Siberian railway across the Chinese provinces of Heilungkiang and Kirin to Vladivostock. The treaty was to endure fifteen years, six months before the expiration of which period the two countries were to deliberate as to its prolongation.

Chinese Eastern Railway. In 1896 Russia was able to obtain from China formal and public consent to extend the Trans-Siberian Railway across the northern end of Manchuria to Vladivostock—entering Manchuria at Manchuli or Manchuria station and running through Harbin.

toute vraisemblance, ils avaient été construits et fabriqués d'après certaines indischétions arrachées aux bureaux du Tsong-li ya-men par un certain docteur Dudgeon, qui était alors correspondant du *Times* à Pékin. Les faits authentiques ici résumés établissent qu'il n'y a pas eu, à vrai dire, de 'convention Cassini,' que la traité d'alliance a été conclu à Saint-Pétersbourg au mois de mai 1896 entre Li Hong-tchang et le prince Lobanoff, que le contrat de chemin de fer a été signé le 8 septembre suivant, à Saint-Pétersbourg, de même, par le ministre de Chine, Hiu K'ing-tcheng, et les délégues de la Banque Russo-Chinoise, et que c'est ce contrat dont le comte Cassini a attendu la ratification définitive à Pékin à la date du 30 septembre, avant de reprendre lui-même le chemin de la Russie."

It may further be observed that the Russian representatives at the Paris Peace Conference in 1918 are reported to have referred to the Li Hung-Chang-Lobanoff treaty in support of Russian rights in Manchuria. See also J. O. P. Bland, *Li Hung-Chang*, Chap. v.

This railway, known as the Chinese Eastern Railway, made available a route 568 miles shorter than one running wholly within Russian territory. The concession for the construction and operation of this railway was granted by the Chinese Government to the Russo-Chinese Bank by an agreement dated September 8, 1896.[35]

It will be important to set forth the rights granted to the Russo-Chinese Bank, that is, in effect, to the Russian Government, with some detail since, so far as north Manchuria is concerned, they still determine in no inconsiderable manner the rights of Russia.

The agreement between the Chinese Government and the Bank provided that the former should pay to the latter five million Kuping taels, and participate in proportion to this amount in the profits and losses of the Bank, and that the Chinese Government having decided upon the construction of a railroad establishing direct communication between the city of Chita and the Russian South Ussuri Railway, would entrust its construction and operation to the Bank upon the following conditions:

The Bank to establish a railway company under the name of the Chinese Eastern Railway Company for the construction and operation of the proposed road; the shares of this Company to be acquired and held only by Chinese and Russian subjects; the president of the Company to be named by the Chinese Government and to reside in Peking, but to be paid by the Company, and his duties to include the seeing to the scrupulous fulfilment by the Bank and the Railway Company of their obligations to the Chinese Government and their relation to the central and local Chinese authorities, and the examina-

[35] MacMurray, No. 1896/5.

tion of the accounts of the Chinese Government with the Bank; the Railway Company to begin construction within a year and to finish the work within six years; the gauge of the road to be the Russian gauge, five feet (four feet, two and a half inches, Chinese.)

Section V of the Agreement provided: "The Chinese Government will take all measures to assure the safety of the railway and of the persons in its service against any attack. . . . Criminal cases, lawsuits, etc., upon the territory of the railway, must be settled by the local authorities in accordance with the stipulations of the treaties."

Section VI provided that the railway company might acquire lands necessary for the "construction, operation, and protection of the line, as also lands in the vicinity of the line necessary for procuring sand, stone, lime, etc.," these lands to be exempt from all land taxes, and the company to have "the absolute and exclusive right of administration of these lands." (*La Société aura le droit absolu et exclusif de l'administration de ses terrains*). On these lands the company was to have the right to build buildings of all sorts and to erect and operate telegraph lines necessary for the needs of the line.

These jurisdictional provisions, as will presently be seen, became of great importance, since, upon them, Russia, and later Japan, have based claims to political jurisdiction in Manchuria of the greatest significance, and these claims have led to considerable differences of opinion not only between China and Russia but between Russia and Japan and the other Treaty Powers.

All Russian troops and war materials carried over the

line, were to be conveyed "directly from one Russian station to another without for any pretext stopping on the way longer than is strictly necessary." Chinese Government dispatches and letters were to be carried by the Company free of cost, and Chinese troops and munitions at half rates. Passengers' baggage, as well as merchandise dispatched in transit from one Russian station to another, were to pay no customs duties or internal taxes, but such merchandise was to be carried in special, sealed vans. Merchandise imported from Russia into China or from China into Russia, was to pay only two-thirds of the Chinese Maritime Customs, and, if carried into the interior, to pay a further one-third which was to exempt it from further charges.

It was further expressly provided that the Company having the exclusive right of operating the line, the Chinese Government was to be in no case responsible for any deficit of the Company "during the time allotted for the work and thereafter for a further eighty years from the day on which the line is finished and traffic is in operation. This period having elapsed, the line, with all its appurtenances, will pass free of charge to the Chinese Government."

Furthermore, it was provided that at the expiration of thirty-six years from the time the line was opened to traffic, the Chinese Government should have the right to buy back the line "upon repaying in full all the capital involved, as well as all the debts contracted for this line, plus accrued interest." [36]

After commenting on the fact that "the Company is a

[36] The line was opened to traffic in 1901.

Russian joint stock company, run by Russians, with Russian money, and under Russian rules," Overlach says:

But in addition to the fact that this railway company is of Russian ownership, we must bear in mind, that the control over the owners is exercised by the Russo-Chinese Bank; a state-controlled institution. . . . To disperse any doubt about the matter of Russian control we shall support our contention by the following consideration: Comparing the Russian control provisions with those to be found in the British agreements we find that no protection is made for the shareholders, who are the nominal owners. There is no mortgage on the railway, because there is no loan made to the Chinese Government. Only the bondholders are protected, namely, by a Russian Government guarantee! The management rests permanently with the company, though nominally under Chinese supervision. In fact all control provisions characteristic of English agreements are absent.[37]

As showing the actual control by the Russian Ministry of Finance may also be adduced the fact that for years the working deficit of the line was carried in the Russian Government Budget, and that a secret Ukase prescribed that officials of the Railway should be subject to the same special jurisdiction as officials of the Government.[38]

Russo-Chinese Bank Chartered. In December, 1896, was chartered [39] by the Russian Government the Russo-Chinese Bank (later merged with the Banque du Nord and thereafter known as the Russo-Asiatic Bank). As described in its charter, this institution was to be an agency for "the collection of duties in the Empire of China, and the transactions relating to the State treas-

[37] *Foreign Financial Control in China*, p. 82.
[38] See MacMurray, notes attached to No. 1896/5.
[39] This Charter is printed in MacMurray, No. 1896/5 (note).

ury of the respective place, the coinage, with the authorization of the Chinese Government, of the country's money, the payment of interest on loans, concluded by the Chinese Government, the acquisition of concessions for the construction of railways within the boundaries of China, and the establishment of telegraph lines."

Port Arthur-Harbin Railway. By the same agreement with China by which Russia obtained in 1898 the lease of the Liaotung Peninsula, she also secured the right to construct a railway north from Port Arthur and Talienman to the Chinese Eastern Railway running east and west across the northern part of Manchuria, or if necessary a branch line from the main line " to a convenient point on the seacoast in the Liaotung Peninsula, between Ying-Tzu (Newchwang) and the Yalu River." This railway concession, the Lease Agreement declared, was " never to be used as a pretext for encroachment on Chinese territory nor to be allowed to interfere with Chinese authority or interests."

Railway Guards and Political Jurisdiction. It would appear that China did not give to Russia, by the Agreement, authority to maintain military forces or guards along the Manchuria railways. If, therefore, she had this right, it must have been obtained under some secret agreement such as the military alliance of 1896.

By " Statutes " promulgated by the Russian Government in December, 1896, for the administration of the affairs of the Railway Company it was provided (§ 8):

> The Chinese Government has undertaken to adopt measures for securing the safety of the railway and all employed on it against extraneous attacks. The preservation of law and order on the lands

assigned to the railway and its appurtenances shall be confined to police agents appointed by the Company. The Company shall for this purpose draw up and establish police regulations.

It appears from these provisions that Russia was preparing to exercise within the railway zones a political jurisdiction which had not been conceded by the Chinese Government. The Russians, however, sought to justify this by an interpretation of the grant to the railway company of *le droit absolu et exclusif de l'administration de ses terrains,* which would cause the right to include not simply the business operations of the railway upon these lands, but the exercise of political control over all persons who might be or live within these areas—a clear mistranslation of the French word *administration.*

However, China not being able to resist this encroachment upon her own rights as the territorial sovereign in Manchuria, Russia proceeded to maintain armed forces, termed " Railway Guards " or " Frontier Guards " at points along the railway line and to establish rules according to which foreigners as well as Russians and Chinese nationals seeking to acquire rights of residence or to hold property or carry on business affairs within the railway zones, should sign an agreement to obey all sanitary, building, trade and other police regulations that might be promulgated by the company, and pay such taxes as might be levied.

By an imperial Ukase of July 20 (August 2) 1901—originally secret, but later made public — the Russian Government made provision for the establishment and functioning of Russian judicial officials within " the line of exploitation of the Chinese Eastern Railway." These judicial officers were to have jurisdiction of matters aris-

ing in the line of exploitation " between Russian subjects exclusively, and particularly, in criminal matters where the accused and injured parties are Russians, and in civil matters where both sides, plaintiff and defendant, are Russian subjects." [40]

Development of Russia's Aggressive Policies in Manchuria. During 1901 it became apparent that Russia was not only unwilling to withdraw from Manchuria the troops which she had sent there during the Boxer troubles, but that she was bringing strong pressure, likely to be successful, upon China to obtain further definitely recognized rights in the Eastern Provinces. And it is known that these demands China was enabled or induced to resist only by reason of the energetic diplomatic representations made by the other Treaty Powers.[41]

In December, 1901, the American Government was

[40] MacMurray, No. 1896/5 (note). By agreements entered into on July 5 (18), 1901, with the authorities of the Province of Kirin, and of January 1 (14), 1902, with the authorities of the Province of Heilungkiang. Russia, acting through the Chinese Eastern Railway Company, laid down elaborate provisions for the exercise of jurisdiction over Chinese subjects within the railway zone—in the main through a so-called Principal Bureau, the officials of which should be appointed by the Chinese official (the Chiang-Chun) but in consultation with the Engineer-in-Chief of the railway company. See MacMurray, Nos. 1901/2 and 1902/1.

[41] MacMurray in his collection of treaties (in a note to No. 1902/3) gives the text of a Japanese version of an alleged secret treaty between China and Russia of February, 1901, which appeared in Shina Kankei Tokushu Joyaku Isan. This, says MacMurray, appears to be a translation from a Chinese original and is somewhat obscure in its phraseology and is therefore presented " with all reserves." This agreement provided that Russia might retain her railway guards in Manchuria until China should be able to restore order there and that should an emergency arise, the Russian troops stationed in that region might assist the Chinese forces; that China should not employ foreigners, other than Russians, as military or naval advisors in the provinces of northern China, nor, without the consent of Russia, transfer to other nations, or to their subjects, mines or other inter-

informed of a new agreement about to be signed between China and Russia the effect of which would be greatly to increase Russian and decrease Chinese military control in Manchuria. Furthermore, the agreement provided that troops of other nations should not be sent to protect the railways; and no further railway or bridge construction in southern portions of Manchuria was to be allowed, or railway termini changed except with Russia's consent.[42]

Protests against this treaty were thereupon made by the United States, and similar protests filed by the British and Japanese Ministers. The United States Government directed its Minister at Peking to inform Prince Regent Ching that the President of the United States "trusts and expects that no arrangement which will permanently impair the territorial integrity of China or injure the legitimate interests of the United States, or impair the ability of China to meet her international obligations, will be made with any single Power."

Again, on February 1, 1902, the following strong protest was delivered by the American Government to the Chinese authorities:

> The Government of the United States can view only with concern an agreement by which China concedes to a corporation the exclusive right to open mines, construct railways, or other industrial privilege; that such monopoly would distinctly contravene treaties of China with foreign Powers, affect rights of citizens of the United States by restricting rightful trade, and tend to diminish her ability to meet international obligations; that other Powers will probably seek similar exclusive advantages in other parts of the

ests in Manchuria, Mongolia, or Sinkiang, or construct railways in those regions. Except in Newchwang there were to be granted no leases or grants to subjects of other Powers.

[42] *U. S. For. Rels.*, 1902, p. 271.

Chinese Empire, which would warn the policy of absolutely equal treatment of all nations in regard to navigation and commerce in the Chinese Empire; and that, moreover, for one Power to acquire exclusive privileges for its railroads within territories recently given to the Government of the United States by the Russian Ministry for foreign affairs of firm intention to follow the policy of the open door in China, is abhorred by the United States and accepted by all the Powers having commercial interests in China.

Finally on March 26 (April 8) 1902, an agreement was signed between China and Russia[4] by which Russia agreed "to the re-establishment of the authority of the Chinese Government in that region [Manchuria], which remains an integral part of the Chinese Empire, and restores to the Chinese Government the right to exercise therein governmental and administrative authority, as it existed previous to the occupation by Russian troops of that region."

With the qualification "provided that no disturbances arise and that the action of other Powers should not prevent it," Russia agreed to withdraw her troops from Manchuria within eighteen months.

Other sections of this treaty limited the right of China, pending evacuation, to maintain troops in Manchuria; and provided that should, in course of time, extensions of the Shanhaikwan-Newchwang-Sinmintung railway line be undertaken, or the erection of a bridge in Newchwang or the moving of the terminus there be contemplated, the matters should be discussed between the two Governments.

Anglo-Japanese Alliance of 1902. Especially by Great Britain and Japan had the development of Russian influ-

[4] MacMurray, No. 1902/3.

ence in the Far East been watched with anxiety. Joined to Russia's advance in Manchuria had been her attempts to increase her influence and control in Korea. The result of this anxiety upon the part of these two nations resulted in the signing of a formal treaty of military alliance between them. In this treaty it was declared that Great Britain had special interests in China, and that Japan, in addition to those interests which she had in China, was politically as well as commercially and industrially interested in Korea. Therefore, the alliance declared, " the High Contracting Parties recognize that it will be admissible for either of them to take such measures as may be indispensable in order to safeguard those interests if threatened either by aggressive action of any other Power, or by disturbances arising in China or Korea and necessitating the intervention of either of the High Contracting Parties for the protection of the lives and property of its subjects." [44]

Japan Declares War on Russia. Russia having failed to carry out her agreement for the evacuation of Manchuria, Japan, on July 28, 1903 submitted to Russia a note of protest in which she said:

The recent conduct of Russia has been, at Peking, to propose new demands, and, in Manchuria, to tighten her hold upon it, until the Imperial Government is led to believe that Russia must have abandoned the intention of retiring from Manchuria. At the same time, her increased activity upon the Korean frontier is such as to raise doubts as to the limits of her ambition.

The unconditioned and permanent occupation of Manchuria by Russia would create a state of things prejudicial to the security and

[44] The Anglo-Japanese Alliances will receive further consideration in connection with the account of the development of Japanese interests in Manchuria. *Post*, p. 329.

interest of Japan. The Principle of equal opportunity would thereby be annulled, and the territorial integrity of China impaired.

In prolonged negotiations Japan was unable to obtain satisfactory action upon the part of Russia, and, on February 5, 1904, sent a final note to the Russian Government in which she declared:

The Government of His Majesty the Emperor of Japan regards the independence and territorial integrity of Korea as essential to the repose and safety of their own country. . . . The obstinate refusals of Russia to enter into an engagement to respect China's territorial integrity in Manchuria, which is seriously menaced by the continued occupation of the province, notwithstanding Russia's treaty engagements with China and her repeated assurance to other Powers possessing interests in those regions—have made it necessary for the Imperial Government to consider what measures of self-defense they are called upon to take.

On February 17, the Japanese Government, in reply to a Chinese declaration of four days earlier, declared:

Japan's hostilities against Russia having been actuated, not by a desire for conquest, but solely by the necessity of defending her just rights and interests, the Imperial Government have not the slightest intention of acquiring territory as a result of the war, at the expense of China. It is also desired that the Chinese Government will clearly understand that the measures to be taken in the field of action within the Chinese territory, arising as they will purely from military necessities, will not be of a nature to infringe the sovereign rights of the Chinese Empire.

Portsmouth Treaty of Peace. By the Portsmouth Treaty of Peace of September 5, 1905,[45] which concluded the Russo-Japanese War, Russia and Japan mutually engaged, by Article III:

[45] MacMurray, No. 1905/8.

1. To evacuate completely and simultaneously Manchuria except the territory affected by the lease of the Liaotung Peninsula.[46]

2. To restore entirely and completely to the exclusive administration of China all portions of Manchuria now in the occupation or under the control of the Japanese or Russian troops, with the exception of the territory above mentioned [Liaotung Peninsula].

The Imperial Government of Russia declare that they have not in Manchuria any territorial advantages or preferential or exclusive concessions in impairment of Chinese sovereignty or inconsistent with the principle of equal opportunity.

Furthermore, by Article IV, Japan and Russia reciprocally engaged "not to obstruct any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria."

By Article V, Russia transferred and assigned to Japan, with the consent of China, which consent both countries mutually engaged themselves to obtain, the Lease of the Liaotung Peninsula and all appertaining privileges and concessions and public works and properties.

By Article VI Russia engaged to transfer and assign to Japan, with China's consent to be obtained, "the railway between Chang-chun (Kuang-cheng-tzu) and Port Arthur, and all its branches, together with all rights, privileges and properties appertaining thereto in that region, as well as coal mines in the said region belonging to or worked for the benefit of the railway."

By Article VII Japan and Russia engaged "to exploit their respective railways in Manchuria exclusively for

[46] By an annexed agreement it was provided that both parties reserved to themselves "the right to maintain guards to protect their respective railway lines in Manchuria." The number of such guards was not to exceed 15 per kilom. and to be as small as possible having in view the actual requirements.

commercial and industrial purposes and in no wise for strategic purposes. It is understood that that restriction does not apply to the railway in the territory affected by the lease of the Liaotung Peninsula."

From the time of the Portsmouth Treaty Russia's sphere of interest was confined to the northern part of Manchuria, her former position in the southern part being taken by Japan. As will presently appear, it was not long before Japan and Russia found themselves working co-operatively in Manchuria, as *vis à vis* China and the other Powers, for it was to the advantage of both that they should give as broad a practical application as possible to the rights which they possessed in their respective parts of Manchuria,—in other words, each should support the other's latitudinarian claims. This chapter in the development of the Manchurian situation will be dealt with in the account of Japan's special interests in China.

Russian Political Jurisdiction in North Manchuria since 1905. As has been already noted, Russia asserted a right within the zone of the Chinese Eastern Railway, and including towns and cities on that line—especially in Harbin—to exercise what amounted to a political jurisdiction not only over her own subjects and the Chinese but over the nationals of the other Treaty Powers.

In 1909 (April 27-May 10) Russia and China entered into a preliminary agreement[47] concerning the exercise by the former of administrative powers on the railway lands, according to which the sovereign rights of China on the lands of the Railway Company were recognized "as a matter of fundamental principle," and that they

[47] MacMurray, No. 1914/14 (note).

should not be prejudiced in any way; but that municipal bodies might be established in the commercial centers of a certain importance situated on the lands of the railway; that the inhabitants of these centers, according to the importance of the localities and the number of the residents, might elect delegates who should chose an Executive Committee, or the residents themselves might take part in the business of the municipality and a representative be elected from amongst them to take upon himself the function of carrying out the resolutions decided upon at meetings of all the residents. In these respects no distinctions were to be made between the Chinese population and the nationals of the Powers. The right to vote was to be dependent upon the ownership of real estate of a fixed value or the payment of a fixed annual rental and taxes. The assembly of delegates was to have authority to deal with all local matters of public utility. These general arrangements, it was declared, should serve as a basis for determining detailed regulations in regard to the municipalities and police, and the scale of taxes to be assessed.

To this agreement the Governments of the various Treaty Powers refused their approval.

In 1908 (April 9) the American Secretary of State, with reference to the matter of the Russian administration at Harbin, had written:

> The grant by the instrument of September 8, 1896, to the railroad company of a right of railroad administration over its own lands could not, even if standing alone, be deemed to carry a right of political administration which would amount to a transfer of sovereign rights; but the same instrument, by the French as well as by the Chinese text, contains also an express provision reserving the political jurisdiction over these lands to the Government of

China. This view appears to agree entirely with that expressed by the Government of Russia in the declaration of the treaty of Portsmouth—that Russia has no territorial advantages or preferential or exclusive concessions in Manchuria of such a nature as to impair the sovereignty of China or which are incompatible with the principle of equal opportunity.

Again, in a note of November 6, 1909, the American Secretary said:

The administration by the railway company of its leased lands provided for in Article VI of the contract can refer only to such business administration as may be necessary to the "construction, exploitation and protection" of the railway, these being the objects expressly mentioned in the article for which these lands were granted by China.

This was, without doubt, the understanding of China as evidenced by the Chinese translation of Article VI and by the protest of the Chinese Government against the attempts by the railway company to administer the municipal Government at Harbin.

Adverting to the French text of the contract, it is to be observed that the land which is the subject of the provisions of Article VI thereof is precisely:

"Les terrains réelement nécessaires pour la construction, exploitation et protection de la ligne, ainsique les terrains aux environs de le ligne, nécessaires pour se procurer des sables, pierres, chaux, etc."

The second paragraph of Article VI reads:

"La Société aura le droit absolu et exclusif de l'administration de ses terrains."

As to the meaning of the word "administration," it seems very worthy of remark that in English the word "administration" is quite commonly used of all sorts of business administration, while the same word in French and the equivalent word in the Chinese version of the contract are still more commonly used of business and non-governmental administration. Indeed, the French word "administration" is so very commonly used of business management that its absolute meaning in a given case would be wholly determined by the context.

A reading of the whole contract deprives the second paragraph of Article VI of all semblance of referring to a political administration.[48]

In a circular note of December 4, 1909, the Chinese Government absolutely repudiated the contention that it had surrendered any right of sovereignty or political jurisdiction to the Chinese Eastern Railway Company with regard to its railway zone.[49]

In February, 1914, the Russian Government asked of the French Government that it recognize an obligation on the part of its nationals to observe the municipal regulations and to pay the municipal taxes levied in the towns within the lands of the Chinese Eastern Railway. To this request an assent was given.

On December 3, 1914, Great Britain entered into an agreement with Russia [50] with regard to the control which might be exercised over British subjects within the railway zone, the more important provisions of which were as follows:

The Russian Government declared that all taxes and dues collected in the Railway Settlement at Harbin and at other Settlements along the road should be exclusively devoted to municipal and public purposes for the common benefit of all the inhabitants of those places. This being understood, the British Government agreed to the payment by its subjects within these areas of the same dues as those levied on Russian subjects, and further that the observance of the local regulations—of which a text is annexed—might be made obligatory, provided there were no conflict with the extraterritorial rights of British

[48] *U. S. For. Rels.*, 1910, p. 219.
[49] *U. S. For. Rels.*, 1910, p. 222.
[50] MacMurray, No. 1914/14.

subjects. Article V of this agreement further declared that the police authorities in Harbin and other Settlements within the area of the railway should give prompt effect to any requests preferred by the British resident consul for the adoption of coercive measures against British subjects, but that such police officials should not, on their own initiative take any coercive action against British subjects except in cases involving a breach of the peace.

To this Anglo-Russian arrangement the Governments of the Netherlands, Belgium, Spain, France, Denmark, Italy and Japan have given their assent. The United States has continued to insist that the payment of taxes by American citizens is to be deemed voluntary on their part, and is to be made through the American consul, and furthermore, that when arrests of Americans are contemplated the Russian authorities shall notify the American consul: that only in cases of *flagrante delicto* may arrests be made without this notification.

Similar Question Raised by Japanese at Mukden. In this connection it may also be noted that the Japanese are now raising at Mukden a question substantially similar to the one the Russians have raised at Harbin. This they are doing by attempting to levy and collect from foreigners an income tax. The only important difference between the two cases is that the Japanese Government is acting through the South Manchuria Railway, whereas at Harbin the Chinese Eastern Railway administration was involved.

CHAPTER XI

The Japanese in Manchuria

Until 1905 it is probable that Japan had formed no deliberate plan to obtain for herself a special and permanent position in South Manchuria. In that year, indeed, was drawn up the Ito-Harriman agreement for the lease and operation with American capital of the South Manchuria Railway which Japan had obtained from Russia.[1] This agreement, to whose terms the consent of China was to be obtained, was in full consonance with the provisions of the Portsmouth treaty. With the return, however, of Komura to Japan from Portsmouth, opposition to the Ito-Harriman agreement immediately developed, and Mr. Harriman was informed that the matter would have to be held in abeyance; and, before long, the plan was definitely abandoned. And events soon showed that Japan had ambitions in Manchuria which did not appear upon the face of the Portsmouth Treaty and were, indeed, in conflict with its provisions.

Upon their face these provisions of the Portsmouth Treaty secured to China her continued sovereignty over and administrative control of Manchuria, and satisfied, so far as the other Treaty Powers were concerned, the requirements of the Open Door policy. In short, upon these points the only change brought about by the treaty

[1] Mr. Harriman was at the time confident that he would be able to obtain the consent of the Russian Government to the sale of the Chinese Eastern Railway, that is, of the Russian railways in Manchuria.

was the substitution of Japan for Russia as regards railway and other rights in South Manchuria, and the transfer of the lease of the Liaotung Peninsula from Russia to Japan.

It very soon appeared, however, that Japan was not to remain content with the Russian rights as thus *publicly* defined, and that, in fact, at the time of signing the treaty, she had been informed by Russia of the latter's rights in Manchuria under secret agreements with China, and which were not shown to the other Powers at the time the Portsmouth Treaty was signed—rights which Japan soon brought forward to sustain her claims to "absolute and exclusive right of administration in the territories attached to the railway."

Japan also alleged that, by a secret clause of an agreement entered into in 1905 between Yuan Shih-K'ai and Komura, she had obtained a right to object to the construction of any railway in Manchuria paralleling and competing with the existing South Manchuria Railway.[2]

Sino-Japanese Treaty of December 22, 1905. By the agreement of December 22, 1905,[3] between China and Japan, China gave her consent "to all the transfers and assignments made by Russia to Japan in Articles V and VI" of the Portsmouth Treaty; and by an "additional agreement" of the same date, that, as soon as the Japanese and Russian military forces were withdrawn, sixteen specified places in Manchuria should be opened as places of international residence and trade. Japan also obtained

[2] See *post, in re* the Hsinmintum-Fakumen and the Chinchow-Aigun railways projects.

[3] MacMurray, No. 1905/18, and note thereto.

" concessions " or " settlements " at Yingkow, Antung, and Mukden. Japan on her part agreed that she would withdraw her railway guards simultaneously with Russia as soon as tranquility should have been re-established in Manchuria, and China " have become herself capable of affording full protection to the lives and property of foreigners."

Antung-Mukden Railway. By Article VI of this additional agreement China further gave to Japan the right " to maintain and work the military railway line constructed [during the Russo-Japanese War] between Antung and Mukden and to improve said line so as to make it fit for the conveyance of commercial and industrial goods of all nations."[4]

With regard to this line, Article VI, however, went on to provide that the concession should expire in the forty-ninth year of Kuang Hsü (1923-1924), at which time, " the said railway shall be sold to China at a price to be determined by appraisement of all its properties by a foreign expert who will be selected by both parties."

Article X of the agreement made provision for the establishment of a joint stock company of forestry composed of Japanese and Chinese capitalists for the exploitation of the forests on the right bank of the River Yalu—the Japanese and Chinese shareholders to share equally in the profits of the undertaking.

Secret Protocols to the Treaty of 1905. Attached, however, to the agreement of December 22, 1905, were a

[4] In other words to build and maintain a permanent standard railway line between these two points, thus enabling Japan to link up her Korean lines at Mukden with the South Manchuria system.

number of secret protocols, a summary of which, in the following February, was made public. These protocols provided, *inter alia*, as follows:

That the railway between Changchun and Kirin should be constructed by China with capital raised by herself, one-half, however, to be borrowed from Japan.

That the military railway constructed by Japan between Mukden and Hsinmintun should be sold to China, who agreed to reconstruct it, making it her own railway: all other military railways to be removed.

That (and this was soon seen to be a very important matter) the Chinese Government engage, for the purpose of protecting the interest of the South Manchuria Railway, not to construct, prior to the recovery by them of the said railway, any main line in the neighborhood of and parallel to that railway, or any branch line which might be prejudicial to the interest of the above mentioned railway.[5]

Hsinmintun-Fakumen Railway. The undertaking thus obtained from China, Japan used in order to prevent the construction by a British firm and with British money of an extension of the North China Railway from Hsinmin-

[5] Rockhill, after giving the foregoing summary of secret protocols to the Treaty of December 22, 1905, adds the following note (p. 140):

"In regard to the foregoing, see No. 1-B (?) Information Series, Far East, being a memorandum of a conversation of January 28, 1908, in the course of which Tang-Shao-i, Governor of the Province of Fengtien, who signed the Peking Agreement, categorically denied the existence of any clause debarring China from paralleling the South Manchurian Railroad. Tang Shao-i further gave distinct assurance that there was no secret agreement between Japan and China and that all the Legations had been apprised of this fact upon the conclusion of the Komura negotiations. Tang Shao-i intimated that an agreement that China should not parallel the Japanese railroad had been sought and discussed, but not made, and implied that such discussion appeared in the signed minutes of the conference, the inference being that there was absolutely no agreement but simply evidence of a discussion of this subject."

Millard, Am. F.E.R. 250-1. says he had such a conversation with Tang Shao-yi

tun to Fakumen, although it was clear that the obtaining of this undertaking as well as the action taken under it was in clear violation of the provisions of the Portsmouth Treaty that "Japan and Russia reciprocally engage not to obstruct any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria."

It follows (says Hornbeck), that a secret treaty provision in which China undertook, upon Japan's demand, "not to construct any railway lines parallel to and competing with the South Manchurian Railway" amounted to the establishment in Japan's favor of a new and special privilege. This diminished China's freedom of action; it was therefore an immediate violation of the pledge made to Russia; it was contrary to principles set forth in the Anglo-Japanese agreement of 1905; and it carried the implication of an intention to close the door in South Manchuria against railway enterprise in other than Japanese hands.[6]

Notwithstanding the objections that might have been made to Japan's position in the Hsinmintun-Fakumen Railway matter, the British Government, for political reasons which may be understood, was unwilling to support the British interests which had obtained the contract for the financing and building of the road, and the project had to be abandoned.

Russo-Japanese Agreement of 1907. By a convention signed July 30, 1907,[7] it was made evident that Japan and Russia had decided to co-operate in Manchuria, each to support the other within its respective sphere. The essential parts of this agreement were as follows:

[6] *Contemporary Politics in the Far East*, p. 259.
[7] MacMurray, No. 1907/11.

ARTICLE I. Each of the High Contracting Parties engages to respect the actual territorial integrity of the other, and all the rights accruing to one and the other Party from treaties, conventions and contracts in force between them and China, copies of which have been exchanged between the Contracting Parties (in so far as these rights are not incompatible with the principle of equal opportunity), from the Treaty signed at Portsmouth on the 5th day of September (23rd of August), 1905, as well as from the special conventions concluded between Japan and Russia.

ARTICLE II. The two High Contracting Parties recognize the independence and the territorial integrity of the Empire of China and the principle of equal opportunity in whatever concerns the commerce and industry of all nations in that Empire, and engage to sustain and defend the maintenance of the *status quo* and respect for this principle by all the pacific means within their reach.

Franco-Japanese Understanding of 1907. By an agreement signed with France, June 10, 1907,[8] the two governments mutually agreed:

To respect the independence and integrity of China, as well as the principle of equal treatment in that country for the commerce and subjects or citizens of all nations, and having a special interest to have the order and pacific state of things preserved especially in the regions of the Chinese Empire adjacent to the territories where they have the rights of sovereignty, protection or occupation, engage to support each other for assuring the peace and security in those regions, with a view to maintain the respective situation and the territorial rights of the two High Contracting Parties in the Continent of Asia.

Root-Takahira Understanding of 1908. November 30, 1908, the Root-Takahira understanding with the United States was obtained by Japan and embodied in an exchange of notes.[9] In these notes it was declared:

[8] MacMurray, No. 1907/7. [9] MacMurray, No. 1908/19.

1. It is the wish of the two governments to encourage the free and peaceful development of their commerce in the Pacific Ocean.

2. The policy of both governments, uninfluenced by any aggressive tendencies, is directed to the maintenance of the existing *status quo* in the region above mentioned and to the defense of the principle of equal opportunity for commerce and industry in China.

3. They are accordingly firmly resolved reciprocally to respect the territorial possessions belonging to each other in said region.

4. They are also determined to preserve the common interest of all Powers in China by supporting by all pacific means at their disposal the independence and integrity of China and the principle of equal opportunity for commerce and industry of all nations in that Empire.

5. Should any event occur threatening the *status quo* as above described or the principle of equal opportunity as above defined, it remains for the two governments to communicate with each other in order to arrive at an understanding as to what measures they may consider it useful to take.

No doubt there were then political considerations which justified this statement of the attitude of the two Powers, and only good could be expected from the explicit reaffirmance "of the principle of equal opportunity for commerce and industry in China," and the repudiation of "any aggressive tendencies," and the support "by all pacific means at their disposal [of] the independence and integrity of China." The unsatisfactory element in this joint pronouncement was the recognition by the United States of the "existing status quo" in the Pacific which, without definition, could easily be construed as an acceptance by the United States of claims of right implicit in various acts of Japan in Manchuria since the Portsmouth Treaty.

Secretary Knox's Plan to "Neutralize" the Railways in Manchuria. The issue as to the extent of the rights of

Japan in South Manchuria was again raised in 1909 when the British interests which had been concerned with the Hsinmintun-Fakumen project joined with a group of American banking interests in a plan to obtain from China the right to construct a railway from Chinchou to Aigun on the northern border of Manchuria. The preliminary agreement [10] providing for the construction of this road was ratified by an Imperial Edict in January, 1910. This matter became the basis of the plan of the American Secretary of State Knox, to bring about a "neutralization" of all the railways of Manchuria, for it was this concession which America proposed to contribute as its share in the scheme. Therefore, before speaking of the final outcome of the Chinchow-Aigun project, it will be necessary first to consider Secretary Knox's plan, and the reception which it met.

It will be remembered that under her various treaties and agreements China had reserved the right to buy, after a certain period, the railways in Manchuria. Secretary Knox's plan was to obtain the agreement of the Powers concerned that this date might be anticipated and to loan to China the purchase money, and, after the sale was effected, and the railways had become the property of the Chinese Government, to have them, for a time at least, administered under a joint international commission.

This plan Secretary Knox first submitted to the British Government for its consideration in a memorandum dated November 9, 1909, sent to the American Ambassador at London and by him to be forwarded to the British Foreign Office.[11]

[10] For text of this agreement, see MacMurray, No. 1909/12.

[11] *U. S. For. Rels.*, 1909, p. 211. See also *U. S. For. Rels.*, 1910, p. 234.

In this memorandum, after calling attention to the fact that the Chinese Government had signed and ratified by an unpublished imperial decree an agreement by which American and British interests were authorized to co-operate in the financing and construction of the Chinchow-Tsitsihar Railroad, the American Secretary went on to say that the Government of the United States was disposed to favor the ultimate participation in this project of such other Powers as might be agreeable to China, and who were known to support the principle of equality of commercial opportunity and the maintenance of the integrity of the Chinese Empire. However, before this arrangement would be further elaborated, the Government of the United States asked that the British Government should give its consideration to the following scheme:

> Perhaps the most effective way to preserve the undisturbed enjoyment by China of all political rights in Manchuria and to promote the development of those Provinces under a practical application of the policy of the open door and equal commercial opportunity would be to bring the Manchurian highways and the railroad under an economic and scientific and impartial administration by some plan vesting in China the ownership of the railroads through funds furnished for that purpose by the interested Powers willing to participate. Such loan should be for a period ample to make it reasonably certain that it could be met within the time fixed and should be upon such terms as would make it attractive to bankers and investors. The plan should provide that nationals of the participating Powers should supervise the railroad system during the terms of the loan, and the Governments concerned should enjoy for such period the usual preferences for their nationals and materials upon an equitable basis *inter se*.
>
> The advantages of such a plan to Japan and Russia (the Memorandum went on to state) are obvious. Both those Powers, desiring

in good faith to protect the policy of the open door and equal opportunity in Manchuria, and wishing to assure to China unimpaired sovereignty, might well be expected to welcome an opportunity to shift the separate duties, responsibilities, and expenses they have undertaken in the protection of their respective commercial and other interests for impartial assumption by the combined Powers, including themselves, in proportion to their interests.

In a statement given to the press on January 6, 1910, the American Secretary of State reviewed recent attempts upon the part of the United States to participate in the financing of Chinese railway projects, and pointed out that the plan for the neutralization of the Manchurian railways was but part of, and served to indicate the end toward which, the American policy in China was directed.

Reply of Great Britain. With regard to the "neutralization" plan, the British Secretary, Sir Edward Grey, replied, on November 25, 1909:

The general principle . . . entirely commends itself to His Majesty's Government, so far as the preservation of the Open Door policy and equal commercial opportunity are concerned, and would in their opinion be well adapted to securing to China full control in Manchuria. I am, however, of opinion, that until the pending negotiations for the Hukuang loan have been completed,[12] it would seem undesirable to consider the question of another international loan for China's railway undertakings, and I would suggest, therefore, that, for the present at any rate, it would be wiser to postpone consideration of the first scheme.

Sir Edward followed with the suggestion that Japan be invited to participate in the Chinchow-Aigun project.[13]

[12] See *post*, Chapter XX.
[13] *U. S. For. Rels.*, 1910, p. 235.

This suggestion the United States Government immediately accepted, but nothing ever came of this phase of the plan.

On December 23, 1909, the American Chargé at Peking reported to his Government the approval by the Chinese Government of the neutralization plan.[14]

Russian Reply. The Knox scheme came to naught, however, through the opposition of Russia and Japan which was expressed in no uncertain terms. The reasons for this disapproval, as stated by Russia in an aide-mémoire delivered January 21, 1910, were as follows:

> Nothing appears at the present time to threaten either this sovereignty or the open door policy in Manchuria. Consequently, the Imperial Government cannot discover in the present condition of Manchuria any reason necessitating the placing on the order of the day of the questions raised by the United States Government. At the same time the Imperial Government believes that it must declare with absolute frankness that the establishment of an international administration and control of the Manchurian railroads as proposed by the Federal Government would seriously injure Russian interests, both public and private, to which the Imperial Government attaches capital importance. This proposition cannot, therefore, meet with a favorable reception on its part.

Going on to discuss more specifically the interests of Russia in Manchuria, the aide-mémoire says:

> The development of Manchuria and the exploitation of its natural resources are not the only purposes pursued by the Chinese Eastern Railroad. The latter is of a public interest of the first order to Russia. It constitutes the principal line of communication between the Russian possessions in the Far East and the rest of the Empire; it is also the great artery by which these possessions

[14] *For. Rels.*, 1910, p. 240.

are supplied with Russian merchandise. In this way the line is but an integral part of the great Trans-Siberian Railway, which is used by almost all of Western Europe in its relations with the Far East. It is this consideration that decided the Russian Government to guarantee, at very considerable expense, the capital invested in the construction of the Chinese Eastern Railway, and to cover the deficit resulting from its operation. It cannot, therefore, be a matter of indifference to the Imperial Government whether it is an international organ that administers a line of such importance, or, on the contrary, a Russian stock company which is obliged not to fix the rates and conditions of transportation of merchandise by the Chinese Eastern Railroad without the consent of the Russian Government, and which, by the very nature of the concession obtained, is closely connected with the interests of the nation.

Regarding the Chinchow-Aigun Railroad the aide-mémoire declared that the project was one of capital importance to the Russian Government. "Its accomplishment will open up a new route giving access from the south not only to the Chinese Eastern Railroad, but directly to Russian possessions at Aigun. This shows adequately the *strategic* and *political* importance of the enterprise.[15] Moreover, the construction of this line will essentially modify the conditions under which eastern Mongolia and the north of Manchuria are served by the Chinese Eastern Railroad." The matter, therefore, it was declared, was one that needed to be further considered before a decision as to the attitude of the Russian Government could be reached. The mémoire concluded with the following paragraph:

It is the same with any future project concerning a financial participation in the construction of railroads in Manchuria. The Imperial Government considers that it must reserve the privilege

[15] Italics not in the original.

of examining every project of this kind from a double standpoint of its political and strategical interests and of the interests of the Chinese Eastern Railroad. Then only could it take a position in regard to each of the lines which might be projected.[16]

A month later—February 24, 1910—Russia informed the United States that " a careful study of the Chinchow-Aigun Railroad project has convinced the Imperial Russian Government that such a railroad would be exceedingly injurious both to the strategic and to the economic interests of Russia. China in 1899 engaged not to build railroads to the north of Peking with foreign capital other than Russian, and Russia could be willing not to insist on the execution by China of this obligation only under the conditions that railroads built with capital provided by international syndicates should not be an evident menace to the security of the Russian frontier and should not injure the interests of Russia's railroad enterprise in Manchuria." [17]

Secret Russo-Chinese Agreement of 1899. This assertion, made in 1910 by Russia, that it had a special promise from China, dating from 1899, was in clear opposition to the solemn engagement of Russia in the Portsmouth Treaty that it had not in Manchuria " any territorial advantages or preferential or exclusive concessions in impairment of Chinese sovereignty or inconsistent with the principle of equal opportunity "; as well as incon-

[16] *U. S. For. Rels.*, 1910, p. 240.

[17] *U. S. For. Rels.*, 1910, p. 261. In this communication the Russian Government went on to say that it had conceived the plan of advising China not to build the Chinchow-Aigun line, but, instead to build a railroad from Kalgan to Urga, and further to the Russian frontier at Kiakhta. Nothing, however, has since come of this project.

sistent with Article IV of that treaty, which declared that "Japan and Russia reciprocally engage not to obstruct any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria."

It is, therefore, not surprising that the American Government should have asked for a copy of the promise of 1899 of the existence of which, up to that time, it had been in total ignorance. When supplied, it was found to be in form of a note addressed by the Chinese Foreign Office (Tsung-li Yamen) to the Russian Minister, M. de Giers, of June 1, 1899, and reading as follows:

Your Excellency. We discussed with Your Excellency a few days ago the subject of a railway connecting the Manchurian Railway with Peking, and explained the difficulty felt by the Chinese Government in acceding to the proposal. But we stated clearly that no other Government would be allowed to construct such a railway. We now wish to reiterate in the plainest terms that China agrees that if railways are in future built from Peking to the north or to the northeast toward the Russian border, China reserves the right to construct such roads with Chinese capital and under Chinese supervision, but if it is proposed to have such construction undertaken by any other nation, the proposal shall first be made to the Russian Government or to the Russian syndicate to construct the railway, and on no consideration will any other Government or syndicate of any other nationality be allowed to construct the railway. We ask Your Excellency to communicate this message to the Foreign Office of Your Excellency's Government.[18]

There can be no question that the American Government was well within its right when, on April 18, 1910, in a memorandum to the Russian Government, it declared

[18] *U. S. For. Rels.*, 1910, p. 264.

that " the Government of China obviously could not by means of preferential agreements with any single Power dispose of rights which it had already granted by treaty generally to other nations, and the United States would therefore be forced to contend that to invoke, in derogation of general treaty rights, such an agreement as the Russo-Chinese understanding of 1899 might nullify stipulations of treaties between China and foreign Powers, and thus seriously curtail the rights of the nationals of other countries." [19]

Japan's Reply to Secretary Knox's Proposal. Japan's reply to Secretary Knox's plan for neutralizing the Manchurian railways was a disapproval equally as strong as the Russian—in fact, it would appear that the two countries had co-operated in their opposition to the scheme. In the note of Count Komura dated January 21, 1910, to the American Ambassador at Tokyo, the Japanese Government declared: [20]

> The most serious objection to the proposal in question lies in the fact that it contemplates a very important departure from the terms of the Treaty of Portsmouth. That treaty was designed to establish in Manchuria a permanent order of things, and the Imperial Government firmly believed that in a strict and loyal adhesion to its provisions are to be found the highest guarantees of enduring peace and repose in this part of the world and of the orderly advancement of Manchuria. Not the least difficult of the many and important problems that were definitely solved at Portsmouth was the question of railways. That adjustment subsequently received the deliberate confirmation of the Chinese Government in the Treaty of Peking (December 22, 1905), and the railway operations now carried on in Southern Manchuria are consistent with

[19] *Ibid.*, p. 265.
[20] *U. S. For. Rels.*, 1910, p. 251.

the original concessions which were with equal deliberation granted by the same Power.

Nor can the Imperial Government see in the present condition of things in Manchuria anything so exceptional as to make it necessary or desirable to set up there an exceptional system not required in other parts of China. There is nothing in the actual situation in that region, so far as the Imperial Government are aware, which exceptionally interferes with the undisturbed enjoyment by China of her political rights. So far as the question of the open door is concerned the principle of equal opportunity possesses in its application to Manchuria a more comprehensive signification than it has elsewhere in China, since, in virtue of Article VII of the Treaty of Portsmouth, the Japanese and Russian railways in those Provinces are dedicated exclusively to commercial and industrial uses. Finally, in the matter of railway administration, it is impossible for the Imperial Government to believe that the substitution of an international in place of a national régime would prove advantageous or beneficial. On the contrary, it seems to them that in the presence of such a system economy and efficiency would, in the nature of things, be obliged to yield to political exigencies and that the divided responsibility of the system would inevitably mean an absence of due responsibility to the serious disadvantage of the public and the detriment of the service.

These are the principal reasons why the project under examination does not commend itself to the favorable consideration of the Imperial Government. But there are other cogent reasons which cannot be ignored.

In the regions affected by the Japanese railways in Manchuria there have grown numerous Japanese industrial and commercial undertakings which owed their inception, as they owe their continual existence, to the fact that the Imperial Government, possessing the railways in question, are able to extend to those enterprises and to the persons engaged in them due protection and defense against attack and pillage by lawless bands that still infest the country. In the development of these enterprises, which are contributing in such a marked degree to the prosperity and progress of Manchuria, a large number of Japanese subjects and large sums of Japanese money are enlisted, and the Imperial Government could

not in good faith or with a due sense of their responsibility consent to surrender the means by which such protection and defense are made possible.

Russian and Japanese Pressure Upon China. Both the Japanese and Russian Governments made strong representations to the Chinese Government that it should not give its assent to the Chinchow-Aigun project.

On January 31, 1910, the Japanese Minister wrote to the Chinese Foreign Office: "Before the Chinese Government determines anything the consent of my Government must first be obtained. If the position of my country is ignored and a decision is made without referring the matter to my Government, it will be hard to estimate the seriousness of the trouble that may be caused in the relations of the two countries."

The Russian Minister declared to China (February 2, 1910): "The Russian Government expects that China will not settle such matters without first consulting Russia. Otherwise there will be trouble in the relations between the two countries."

Again in a memorandum transmitted directly to the Chinese Regent, of February 8, 1910, the Russian Minister declared that the Chinchow-Aigun road would "affect both military and political arrangements and would materially change the relations of the Manchurian railways to eastern Mongolia and northern Manchuria. . . . In regard to all future railways in Manchuria which China may propose to build with borrowed capital, the Russian Government must be first consulted and must first consider if the plans have any consequence to the military and political interests of Russia, or to the Northern Manchurian railways."

France and Great Britain Fail to Support Secretary Knox's Proposal. France, as an ally of Russia, came to the support of Russia, and, in a letter of March 4, 1910, to the Chinese Foreign Office, declared that Russia should be consulted by China before granting concessions for the building of railways in North Manchuria.

Great Britain declined to support even the Chinchow-Aigun project. Replying to a question in Parliament, Sir Edward Grey said (June 15, 1910):

> The Chinchow-Aigun Railway is a railway which is to cross the line to Russia and is to extend right up to the Russian frontier. In these circumstances I think that if the Chinese were going to have this railway made by foreigners we could not in the face of the Anglo-Russian agreement take an active part in supporting it until the Chinese had come to terms with Russia about it. Japan has not opposed the railway in principle, but has asked for participation; and I think that was a perfectly reasonable demand on the part of Japan. If Japan had taken up the line of stating that she wished to have a railway monopoly in Manchuria, that would have been a distinct breach of the open door. If she made use of her position there by giving preferential treatment to her own people as against others, that again would be a breach of the open door. But for Japan to say that after all that has passed she has an interest in Manchuria which justifies her in wishing for participation in railways which may to some extent compete with the railway which is already in existence—not I say, in opposing them in principle, but in asking for participation in them—it would be going too far for us to declare that that is an unreasonable demand to make, and to take active diplomatic steps at Peking to press for the granting of this concession.[21]

"To recapitulate," says Millard, in an article in which he reviews the foregoing correspondence, "we find that the following issues affecting the sovereignty of China

[21] *U. S. For. Rels.*, 1910, p. 269.

and the open door principle within her territory have been sharply defined:

1. The right of China to decide upon the course of railway development within her territory is denied by certain foreign nations.
2. Certain foreign nations have declared that their strategical and political interests must be considered as paramount in planning a railway system within China's territory.
3. Certain foreign nations have asserted the right to decide who will finance, construct, and operate railways within China's territory and to veto arrangements in regard to these matters which China has made and wishes to carry out.[22]

Russo-Japanese Treaty of July 4, 1910. The next step in the Manchuria question was the signing of the convention of July 4, 1910,[23] between Russia and Japan, providing for joint action in Manchuria—an agreement which was undoubtedly urged on by the attempt which America had made by the Chinchow-Aigun project, and by the Knox neutralization plan, to place a restraint upon the apparent intention of Japan and Russia to establish exclusive claims in Manchuria.

This Russo-Japanese Convention was as follows:

The Imperial Government of Japan and the Imperial Government of Russia, sincerely attached to the principles established by the convention concluded between them on the 17th (30th) July, 1907,[24] and desirous to develop the effects of that convention, with a view to the consolidation of peace in the Far East, have agreed to complete the said arrangement by the following provisions:

ARTICLE I. With the object of facilitating the communication and developing of the commerce of nations, the two High Contract-

[22] "America in China," in *The Forum*, vol. XLIV, p. 66.
[23] MacMurray, No. 1910/1.
[24] See *ante*, p .314.

ing Parties mutually engage to lend to each other their friendly co-operation, with a view to the amelioration of their respective railway lines in Manchuria and the improvement of the connecting service of the said railways, and to abstain from all competition prejudicial to the realization of this object.

II. Each of the High Contracting Parties engages to maintain and respect the *status quo* in Manchuria resulting from the Treaties, Conventions, and other arrangements concluded up to this day between Japan and Russia, or between either of these two Powers and China. Copies of the aforesaid arrangements have been interchanged between Japan and Russia.

III. In case any event arises of a nature to menace the *status quo* above mentioned, the two High Contracting Parties shall in each case enter into communication with each other in order to arrive at an understanding as to the measures they may judge it necessary to take for the maintenance of the said *status quo*.

Renewal in 1911 of the Anglo-Japanese Alliance. On July 13, 1911, was again renewed, for ten years, with some changes, the Anglo-Japanese Alliance [25] which had been originally entered into January 30, 1902, and renewed August 12, 1905. These new articles of alliance made no mention of Korea, as had the earlier ones, but reaffirmed the intention to insure the independence and integrity of the Chinese Empire and equal opportunities for the commerce and industry of all nations in China. Among the other purposes mentioned in the preamble is "the maintenance of the territorial rights of the High Contracting Parties in the regions of Eastern Asia and of India and of the defense of their 'special interests' in those regions."

The agreement goes on to provide that if either party is of opinion that its respective rights, as mentioned in

[25] MacMurray, No. 1911/7.

the preamble are in jeopardy, the two governments will communicate with one another fully and frankly and consider what measures should be taken to safeguard such rights; and that "if by reason of unprovoked attack or aggressive action, wherever arising, on the part of any Power or Powers, either High Contracting Party should be involved in war in defence of its territorial rights or special interests mentioned in the preamble of this agreement, the other High Contracting Party will at once come to the assistance of its ally, and will conduct the war in common, and make peace in mutual agreement with it."

It is also provided that neither of the two governments will enter into any separate agreements with other Powers to the prejudice of the interests mentioned in the preamble, but that "should either High Contracting Party conclude a treaty of general arbitration with a third Power, it is agreed that nothing in this agreement shall entail upon such contracting party an obligation to go to war with the Power with whom such treaty of arbitration is in force."

It is known that this reservation was inserted in order that Great Britain should not be called upon, under the treaty, to engage in war against the United States, with which country Great Britain had negotiated a convention of general arbitration. This convention, however, failed to receive the approval of the United States Senate.[26]

Japan's Twenty-One Demands in 1915 Upon China. Early in 1915 came the famous Twenty-One Demands[27]

[26] There is, however, in force a treaty of limited arbitration between Great Britain and the United States, signed April 4, 1908, and renewed in 1913, and again in 1918 for a further period of five years. *U. S. Statutes at Large*, 1917-1918, Pt. II.

[27] For the text of the original demands, and other documents relevant to

which Japan made upon China. Later on there will be occasion to consider the general significance of these demands. Here they will be discussed only in so far as they related to the situation in Manchuria. Because, in these demands, Japan so plainly set forth her ambitions in and intentions towards China, it will be necessary to consider them in some detail—giving them in their original and revised forms, and showing the final results reached.

These demands, as is well known, were segregated into five groups, the second of which related to Manchuria and Eastern Inner Mongolia.

Group II—Original Form. As later published by the Japanese Government, Group II of the demands, in their original form, read:

The Japanese Government and the Chinese Government, in view of the fact that the Chinese Government has always recognized the predominant position of Japan in South Manchuria and Eastern Inner Mongolia,[28] agree to the following articles:

ARTICLE I. The two Contracting Parties mutually agree that the term of the lease of Port Arthur and Dairen and the term respecting the South Manchuria Railway and the Antung-Mukden Railway shall be extended to a further period of 99 years respectively.

ARTICLE II. The Japanese subjects shall be permitted in South Manchuria and Eastern Inner Mongolia to lease and own land required either for erecting buildings for various commercial and industrial uses or for farming.

the negotiations resulting in these treaties and exchanges of notes between Japan and China, May 25, 1915, see MacMurray, No. 1915/8.

[28] The version given out by the Chinese Government uses the phrase "has always acknowledged the special position enjoyed by Japan."

ARTICLE III. The Japanese subjects shall have liberty to enter, reside, and travel in South Manchuria and Eastern Inner Mongolia, and carry on business of various kinds—commercial, industrial, and otherwise.

ARTICLE IV. The Chinese Government grant to the Japanese subjects the right of mining in South Manchuria and Eastern Inner Mongolia. As regards the mines to be worked, they shall be decided upon in a separate agreement.

ARTICLE V. The Chinese Government agree that the consent of the Japanese Government shall be obtained in advance, (1) whenever it is proposed to grant to other nationals the right of constructing a railway or to obtain from other nationals the supply of funds for constructing a railway in South Manchuria and Eastern Inner Mongolia, and (2) whenever a loan is to be made with any other Power, under security of taxes of South Manchuria and Eastern Inner Mongolia.

ARTICLE VI. The Chinese Government engage that whenever the Chinese Government need the services of political, financial, or military advisers or instructors in South Manchuria or in Eastern Inner Mongolia, Japan shall first be consulted.

ARTICLE VII. The Chinese Government agree that the control and management of the Kirin-Changchun Railway shall be handed over to Japan for a term of 99 years, dating from the signing of this Treaty.

Group II—Revised. Partly, possibly because of Chinese protestations, but principally because of outside pressure upon the part of the Powers who had become cognizant of the fact that these demands were being pressed, Japan consented to a revision of her demands. In their revised form, those relating to South Manchuria and neighboring Eastern Inner Mongolia read as follows: [29]

[29] This is from the text as published by the Chinese Government.

GROUP II

The Japanese Government and the Chinese Government, with a view to developing their economic relations in South Manchuria and Eastern Inner Mongolia, agree to the following articles:—

ARTICLE 1. The two contracting Parties mutually agree that the term of lease of Port Arthur and Dalny and the term of the South Manchuria Railway and the Antung-Mukden Railway, shall be extended to 99 years.

(Supplementary Exchange of Notes)

The term of lease of Port Arthur and Dalny shall expire in the 86th year of the Republic or 1997. The date for restoring the South Manchurian Railway to China shall fall due in the 91st year of the Republic or 2002. Article 12 in the original South Manchurian Railway Agreement that it may be redeemed by China after 36 years after the traffic is opened is hereby cancelled. The term of the Antung-Mukden Railway shall expire in the 96th year of the Republic or 2007.

ARTICLE 2. Japanese subjects in South Manchuria may lease or purchase the necessary land for erecting suitable buildings for trade and manufacture or for prosecuting agricultural enterprises.

ARTICLE 3. Japanese subjects shall be free to reside and travel in South Manchuria and to engage in business and manufacture of any kind whatsoever.

ARTICLE 3a. The Japanese subjects referred to in the preceding two articles, besides being required to register with the local authorities passports which they must procure under the existing regulations, shall also submit to the police laws and ordinances and tax regulations, which are approved by the Japanese Consul. Civil and criminal cases in which the defendants are Japanese shall be tried and adjudicated by the Japanese Consul; those in which the defendants are Chinese shall be tried and adjudicated by Chinese Authorities. In either case an officer can be deputed to the court to attend the proceedings. But mixed civil cases between Chinese and Japanese relating to land shall be tried and adjudicated by

delegates of both nations conjointly, in accordance with Chinese law and local usage. When the judicial system in the said region is completely reformed, all civil and criminal cases concerning Japanese subjects shall be tried entirely by Chinese law courts.[30]

ARTICLE 4. (Changed to an exchange of notes.)

The Chinese Government agrees that Japanese subjects shall be permitted forthwith to investigate, select, and then prospect for and open mines at the following places in South Manchuria, apart from those mining areas in which mines are being prospected for or worked; until the Mining Ordinance is definitely settled, methods at present in force shall be followed.

Province of	Locality	District	Mineral
Feng-tien			
	Niu Hsin T'ai	Pen-hsi	Coal
	Tien Shih Fu Kou	Pen-hsi	do
	Sha Sung Kang	Hai-lung	do
	T'ieh Ch'ang	T'ung-hua	do
	Nuan Ti T'ang	Chin	do
	An Shan Chan region	From Liao-yang to Pen-hsi	Iron.
Province of Kirin (Southern portion)			
	Sha Sung Kang	Ho-lung	C. &. I
	Kang Yao	Chi-lin (Kirin)	Coal
	Chia P'i Kou	Hua-tien	Gold

ARTICLE 5. (Changed to an exchange of notes.)

The Chinese Government declares that China will hereafter provide funds for building railways in South Manchuria; if foreign

[30] In an "Explanatory Note" handed to the Chinese Minister of Foreign Affairs by the Japanese Minister at the time of the delivery of the ultimatum, on May 7, 1915, it was declared that "Article 4 [3a] of Group II relating to the approval of police and ordinances and local taxes by the Japanese Consul may form the subject of a secret agreement." This provision appeared only in the official communique supplied by the Chinese Government.

capital is required, the Chinese Government agrees to negotiate for a loan with Japanese Capitalists first.

ARTICLE 5a. (Changed to an exchange of notes.)

The Chinese Government agrees that hereafter, when a foreign loan is to be made on the security of the taxes of South Manchuria (not including customs and salt revenue on the security of which loans have already been made by the Central Government) it will negotiate for the loan with Japanese capitalists first.

ARTICLE 6. (Changed to an exchange of notes.)

The Chinese Government declares that hereafter if foreign advisers or instructors on political, financial, military or police matters are to be employed in South Manchuria, Japanese will be employed first.

ARTICLE 7. The Chinese Government agrees speedily to make a fundamental revision of the Kirin-Changchun Railway Loan Agreement, taking as a standard the provisions in railway loan agreements made heretofore between China and foreign financiers. If, in future, more advantageous terms than those in existing railway loan agreements are granted to foreign financiers, in connexion with railway loans, the above agreement shall again be revised in accordance with Japan's wishes.

CHINESE COUNTER-PROPOSAL TO ARTICLE 7

All existing treaties between China and Japan relating to Manchuria shall, except where otherwise provided for by this Convention, remain in force.

MATTERS RELATING TO EASTERN INNER MONGOLIA

1. The Chinese Government agrees that hereafter when a foreign loan is to be made on the security of the taxes of Eastern Inner Mongolia, China must negotiate with the Japanese Government first.

2. The Chinese Government agrees that China will herself provide funds for building the railways in Eastern Inner Mongolia; if foreign capital is required, she must negotiate with the Japanese Government first.

3. The Chinese Government agrees, in the interest of trade and for the residence of foreigners, to open by China herself, as soon as possible, certain places suitable in Eastern Inner Mongolia as Commercial Ports. The places which ought to be opened are to be chosen, and the regulations are to be drafted, by the Chinese Government, but the Japanese Minister must be consulted before making a decision.

4. In the event of Japanese and Chinese desiring jointly to undertake agricultural enterprises and industries incidental thereto, the Chinese Government shall give its permission.

Treaties and Notes of 1915. On May 7, Japan issued an ultimatum to China, giving her a short forty-eight hours in which to accept the demands in their revised form. China, having no option, yielded. The resulting treaty and notes so far as they related to Manchuria and Eastern Inner Mongolia were as follows:

ARTICLE 1. The Two High Contracting Parties agree that the term of lease of Port Arthur and Dalny and the terms of the South Manchuria Railway and the Antung-Mukden Railway, shall be extended to 99 years.

ARTICLE 2. Japanese subjects in South Manchuria may, by negotiation, lease land necessary for erecting suitable buildings for trade and manufacture or for prosecuting agricultural enterprises.

ARTICLE 3. Japanese subjects shall be free to reside and travel in South Manchuria and to engage in business and manufacture of any kind whatsoever.

ARTICLE 4. In the event of Japanese and Chinese desiring jointly to undertake agricultural enterprises and industries incidental thereto, the Chinese Government may give its permission.

ARTICLE 5. The Japanese subjects referred to in the preceding three articles, besides being required to register with the local Authorities passports which they must procure under the existing regulations, shall also submit to the police laws and ordinances and taxation of China.

Civil and criminal cases in which the defendants are Japanese shall be tried and adjudicated by the Japanese Consul; those in which the defendants are Chinese shall be tried and adjudicated by Chinese Authorities. In either case an officer may be deputed to the court to attend the proceedings. But mixed civil cases between Chinese and Japanese relating to land shall be tried and adjudicated by delegates of both nations conjointly in accordance with Chinese law and local usage.

When, in future, the judicial system in the said region is completely reformed, all civil and criminal cases concerning Japanese subjects shall be tried and adjudicated entirely by Chinese law courts.

ARTICLE 6. The Chinese Government agrees, in the interest of trade and for the residence of foreigners, to open by China herself, as soon as possible, certain suitable places in Eastern Inner Mongolia as Commercial Ports.

ARTICLE 7. The Chinese Government agrees speedily to make a fundamental revision of the Kirin-Changchun Railway Loan Agreement, taking as a standard the provisions in railway loan agreements made heretofore between China and foreign financiers.

When in future, more advantageous terms than those in existing railway loan agreements are granted to foreign financiers in connection with railway loans, the above agreement shall again be revised in accordance with Japan's wishes.

ARTICLE 8. All existing treaties between China and Japan relating to Manchuria except where otherwise provided for by this treaty remain in force.

Accompanying this treaty was an exchange of notes between China and Japan which constituted, in effect, annexes to the treaty.

In one of these was declared cancelled the provision of the original South Manchuria Railway agreement that the road might be redeemed by China after thirty-six years. Also it was provided that the terms of the An-

tung-Mukden Railway should be extended to the year 2007.

In another note it was declared that the commercial ports to be opened should be selected by China only after consulting the Japanese Minister.

In still another note areas were specified within which Japanese subjects might "investigate and select mines, except those being prospected for or worked, and the Chinese Government will then permit them to prospect or work the same." Other notes contained the following agreements:

China will hereafter provide funds for building necessary railways in South Manchuria and Eastern Inner Mongolia; if foreign capital is required China may negotiate for a loan with Japanese capitalists first: and further, the Chinese Government, when making a loan in future on the security of the taxes in the above mentioned places (excluding the salt and customs revenues which have already been pledged by the Chinese Central Government) may negotiate for it with Japanese capitalists first.

That "hereafter, if foreign advisers or instructors on political, military or police matters are to be employed in South Manchuria, Japanese may be employed first."

That the term "lease by negotiation" contained in Article 2 of the treaty should be understood to imply a long-term lease of not more than thirty years and also the possibility of its unconditional renewal.

That Chinese authorities will notify the Japanese Consul of the Police laws and ordinances and the taxation to which Japanese subjects shall be subject according to Article 5 of the Treaty so as to come to an understanding with him before their enforcement.

Comment on the Foregoing Demands, Treaty, and Notes. It has been thought proper to set forth the demands in their original form since they serve to show the desires and ambitions of Japan in Manchuria and Mongolia.

The demands have also to be interpreted in the light of Group V of the Demands which were of general territorial application and which would, if granted, have made of China a virtual political dependency of Japan. Account is also to be taken of a fact that is true of all of the Twenty-One Demands, that, with only a few relatively unimportant exceptions, they were not based upon, and in settlement of, previously pending controversies, but were simply drawn up and presented by Japan at a time when she thought that she would be able to enforce her will without regard to existing rights and obligations or to her treaty engagements with China and the other Powers.

First of all it will be observed that Japan introduced Group II of her demands with the statement that " the Chinese Government has always acknowledged the special position enjoyed by Japan in South Manchuria and Eastern Inner Mongolia." This was not a fact and obviously represented an attempt upon the part of Japan to get China committed to this proposition. In its revised form, for this proposition was submitted the statement that the two governments " with a view to developing their economic relations in South Manchuria and Eastern Inner Mongolia, agree, etc."

By Article I of the group the lease of Port Arthur and Dalny and the term of the South Manchuria and Antung-Mukden Railways were extended to ninety-nine years. This was a very important matter to Japan. Under the then existing lease and agreements the lease of the Liaotung, or Kwantung Peninsula, as it is also called, would have expired in eight years, that is, in 1923, and the right to control the railway would have expired in 1938.

As Mr. Bronson Rea, editor and proprietor of the *Far Eastern Review,* says:

It was recognized that if a stable government was established in China and the country regained its financial feet and created a modern army and navy, she would never willingly consent to an extension of the lease without some compensating advantages. As long as other Powers were loaning money to China, and standing sponsor for her independence and integrity, and urging her to purchase arms and ammunition, war ships and other implements of defense, this problem became a nightmare to Japan from the political viewpoint alone, as her only chance to maintain her hold in Manchuria, meant that she would have to fight for it. The question of the extension of the lease also seriously interfered with Japan's economic program in Manchuria, for after the first few loans secured on the railway, she found it increasingly difficult to persuade financiers to advance further funds, because of the short unexpired time of the lease. This point reached a climax five years ago (1910) when her overtures for a large loan secured on the railway were turned down in the international money markets.[31]

In the final treaty of 1915 the demand for these lease extensions was granted in substantially the terms in which they were demanded. As the matter now stands, therefore, "the date for restoring the South Manchurian Railway to China shall fall due in the ninety-first year of the Republic or 2002. The terms of the Antung-Mukden Railway will expire in 2007."

It is to be observed that the cancellation of the rights of China to purchase in 1938 the South Manchuria Railway had not been asked in the original demands.

By Article 2 of Group II, as originally presented, Japanese subjects were to have the right to lease or own land

[31] "Analysis of the China-Japanese Treaties," p. 23. This is a pamphlet by the editor of the *Far Eastern Review.*

in South Manchuria and Eastern Inner Mongolia for erecting buildings for trade, manufacture, or farming. It will be observed that in the revised demands the words "lease or own" were changed to "lease or purchase" and in the resulting treaty only the right to lease was granted and this right restricted to South Manchuria.

By Article 3 of the group in its original form, Japanese subjects were to be free to reside and travel and engage in business and manufacture of any kind whatsoever not only in South Manchuria but in Eastern Inner Mongolia. In their revised form, these rights were not extended to Mongolia and a paragraph was added that the Japanese subjects availing themselves of the rights concerned should be required to register their passports with the local authorities and "submit to police laws and ordinances and tax regulations, which are approved by the Japanese Consul."

These provisions of Article 3 deserve some comment. In the "Official Statement Respecting the Sino-Japanese Negotiations," issued by the Chinese Government, it is said:

> The demand by Japan for the right of her subjects in South Manchuria to lease or own land, and to reside and travel, and to engage in business or manufacture of any kind whatever, was deemed by the Chinese Government to obtain for Japanese subjects in this region a privileged status beyond the terms of the treaties existing between the two nations, and to give them a freedom of action which would be a restriction of China's sovereignty and a serious infringement of her administrative rights. Should Japanese subjects be granted the right of owning land, it would mean that all the landed property in the region might fall into their hands, thereby endangering China's territorial integrity.[32] More-

[32] Japan was asking for something that she has never been willing freely

over, residence in the interior was incompatible with the existence of extraterritoriality, the relinquishment of which is necessary to the actual enjoyment of the privilege of inland residence, as evidenced in the practice of other nations.

Japan's unconditional demand for the privilege of inland residence accompanied with a desire to extend extraterritoriality into the interior of China and to monopolize all the interests in South Manchuria, was also palpably irreconcilable with the principle of the Open Door.[33]

China, therefore, made several counter-proposals upon these points, as, for example, the opening of more places in South Manchuria to international trade and the establishment of joint Sino-Japanese reclamation companies. These being rejected by the Japanese representatives, China proposed to give to Japanese subjects the right of inland residence with the proviso that those outside the trading ports should observe Chinese police regulations and pay taxes in the same manner as Chinese, and that civil and criminal cases involving such Japanese should be tried by Chinese courts, the Japanese consul attending merely to watch the proceedings. This suggestion, it was declared, was not an innovation but similar to the *modus operandi* then in force as regards Korean settlers in inland districts in the Chientao region.[34] This proposi-

to grant within her own borders. Of course the granting of the right by China, with its greatly weaker and less efficient administrative control, would be much more dangerous to herself than it would be to a country like Japan with a strongly centralized and administratively efficient political organization.

[33] This would be true so far as Japanese were given or claimed exclusive rights in Manchuria. It would not, of course, be true in so far as, under the operation of the most-favored-nation principle, the nationals of the other Treaty Powers become entitled to the rights granted to the Japanese.

[34] For the agreement of September 4, 1909, concerning the Chientao Region, see MacMurray, No. 1909/10.

tion the Japanese rejected, as they did other alternatives which the Chinese offered. At the request of the Japanese the Chinese agreed to change the term "police law and ordinances" to the milder term "police rules and regulations" to which the Japanese settlers were to be amenable.

With regard to the extraterritorial rights which the Japanese Government demanded for its subjects in the interior, it is to be remarked that even the police rules and regulations to which they are to conform, are to be only such as are approved by the Japanese consul. This, of course, goes far beyond the ordinary doctrine of extraterritoriality as elsewhere applied in China. The same is true of the requirement that all mixed civil cases between Chinese and Japanese relating to land, that is, irrespective of who is defendant and who plaintiff, should be tried by delegates of both nations conjointly. Finally, it is to be observed, that this greatly extended extraterritorial system is to be abolished only when the judicial system of the region is completely reformed. Significant in this connection is the proposition contained in the "Explanatory Note" of May 7, 1915, that the matter of the approval of police and ordinances and local taxes by the Japanese consul might form the subject of a secret agreement between the two countries. That the agreement should be secret at least suggests the possibility that Japan was looking forward to the time when her nationals in South Manchuria and Eastern Inner Mongolia were to be given privileges that other nationals were not to enjoy.

By Article 4 of the group as originally presented China was to agree "to grant to Japanese subjects the right

of opening the mines in South Manchuria and Eastern Mongolia. As regards what mines are to be opened, they shall be decided upon jointly."

In this form the demand "tended" as the Chinese Government declared, "to create a monopoly for Japanese subjects, and, therefore, was entirely inconsistent with the principle of equal opportunity. The Chinese Government explained that they could not, in view of the treaty rights of other Powers, agree to this monopoly, but they readily gave their acceptance when Japan consented to the modification of the demand so as to mitigate its monopolistic character."[35]

In their revised form this engagement was to be embodied in "an exchange of notes" and the Chinese Government was to agree that Japanese subjects should "be permitted forthwith to investigate, select, and then prospect for and open mines" at certain designated places in South Manchuria, "apart from those mining areas in which mines are being prospected for or worked."

In the final "Exchange of Notes" this grant was, as we have seen, phrased as follows:

> Japanese subjects shall, as soon as possible, investigate and select mines on the mining areas specified hereinunder, except those being prospected for or worked, and the Chinese Government will then permit them to prospect or work the same; but before the mining regulations are definitely settled, the practice at present in force shall be followed.

By Article 5 of Group II of the Original Demands China was to agree that without first obtaining the con-

[35] Official Statement of the Chinese Government Respecting the Sino-Japanese Negotiations.

sent of the Japanese Government, she would take no action with regard to granting permission to a subject of a third power " to build a railway or to make a loan with a third Power for the purpose of building a railway in South Manchuria and Eastern Inner Mongolia "; and the same should be true " wherever a loan is to be made with a third Power pledging the local taxes of South Manchuria and Eastern Inner Mongolia as security."

These important restrictions upon China's freedom of action and in favor of Japanese interests were, as has been seen, somewhat modified in the revised demands, and in the note exchanged on the subject. It is, however, highly significant that Japan should have demanded of China such exclusive rights for herself in South Manchuria and Eastern Inner Mongolia. And it is interesting to compare this fact with the statement of Sir Edward Grey to Parliament, earlier quoted,[36] with reference to the projected Chinchow-Aigun Railway that " if Japan had taken up the line of stating that she wished to have a railway monopoly in Manchuria, that would have been a distinct breach of the open door. If she made use of her position there by giving preferential treatment to her own people as against others, that again would be a breach of the open door."

That Japan's demands with reference to Manchuria and Eastern Inner Mongolia were in violation of America's interpretation of the open door principle is sufficiently plain, and, as has since been shown, in connection with the correspondence relating to the proposed new banking Consortium for lending money to China, not

[36] P. 327.

even the recognition by America of Japan's " Special Interests " has carried with it, in the mind of the Government at Washington, the admission that Japan's pledges to respect the open door principle might be so loosely interpreted as to permit her to make upon China a demand or even a request that she, Japan, should have the rights in Manchuria and Mongolia which she sought to obtain in 1915.

By Article 6 of Group II Japan demanded that the Chinese Government agree that the Japanese Government should first be consulted if political, financial or military advisors or instructors in South Manchuria or Eastern Mongolia were employed. In the revised demands this was made stronger, but limited to South Manchuria, the undertaking being that Japanese should be employed first. In the exchange of notes in which the agreement was finally embodied, it is stated that " Hereafter, if foreign advisors or instructors on political, financial, military or police matters are to be employed in South Manchuria, Japanese may be employed first."

By the final article (7) of the original Group II, the Chinese Government was required to agree that the control and management of the Kirin-Changchun Railway should be handed over to the Japanese Government for a term of ninety-nine years. This demand, it is to be observed, involved a fundamental change in existing loan contracts between China and foreign capitalists. Originally the capital of this road was half Chinese and half Japanese. The change demanded would therefore have practically operated to transfer the capital originally held by the Chinese wholly to Japanese control and management. In the revised demands, however, consid-

erable changes were made upon this point, and, in the final treaty the language is:

ARTICLE 7. The Chinese Government agrees speedily to make a fundamental revision of the Kirin-Changchun Railway Loan Agreement, taking as a standard the provisions in railway agreements made heretofore between China and foreign financiers. When in future, more advantageous terms than those in existing railway loan agreements are granted to foreign financiers in connection with railway loans, the above agreement shall again be revised in accordance with Japan's wishes.

In a later chapter reference will be made to certain communications which the United States made to Japan in connection with her Twenty-one Demands.

Chengchiatun Incident and Resulting Japanese Demands. In September, 1916, there came a further official exposition of the desires and intentions of the Japanese Government in Manchuria. This revelation was furnished by the demands which that Government pressed upon China because of an alleged wrong done to its nationals in a fracas which arose in January, 1916, between Chinese and Japanese soldiers in the small Manchurian town of Chengchiatun, near the border of Mongolia.

The evidence as to what occurred at that time is conflicting, but, so far as it can be reduced to a definite and credible basis it would appear that the Japanese soldiers were the aggressors and, in fact, in the wrong throughout the trouble. And, in this connection, it may be observed that Japan had no treaty or other legal right to have soldiers at Chengchiatun at all. For the purposes of this volume, however, the important fact is as to the demands which Japan predicated upon this event. These, in addition to the requirements that the general com-

manding the local Chinese division of troops should be punished, the officers concerned dismissed, and all who took a direct part in the fracas punished, included the demand that China should agree "to the stationing of Japanese police officers in places in South Manchuria and Eastern Inner Mongolia where their presence was considered necessary for the protection of Japanese subjects. China also to agree to the engagement by the officials of South Manchuria of Japanese police advisors." In other words, that Japan should be given an indefinite and therefore general right to participate in the policing of whatever portions of South Manchuria and Eastern Inner Mongolia she might think desirable.[37]

But this was not all. The following "desiderata" were also presented:

1. Chinese troops stationed in South Manchuria and Eastern Inner Mongolia to employ a certain number of Japanese military officers as advisors.
2. Chinese Military Cadet Schools to employ a certain number of Japanese military officers as instructors.
3. The Military Governor of Mukden to proceed personally to Port Arthur to the Japanese Military Governor of Kwantung to apologize for the occurrence and to tender similar apologies to the Japanese Consul General in Mukden.
4. Adequate compensations to be paid by China to the Japanese sufferers and to the families of those killed.

These demands and desiderata, it is to be observed, were based upon facts as alleged by the Japanese, and not as determined by any thorough or bi-lateral examination as to who had been in the wrong.

[37] See especially the *Note Verbale* handed by the Japanese Minister to the Chinese Minister of Foreign Affairs, given in MacMurray, note to No. 1917/2. See also, *ante*, p. 80, for discussion of Japan's claim of right to establish "police boxes" in China.

Replying to these demands, the Chinese Government, on January 12, 1917, said that it was unwilling to employ Japanese instructors in its military cadet schools; that a Japanese military advisor was already employed in the office of the Military Governor of Mukden, and that, in regard to the stationing of Japanese police officers, the agreement of May 25, 1915, had provided that all Japanese subjects in South Manchuria and in Eastern Inner Mongolia should "submit to the police laws and ordinances and taxation of China," and that, therefore, questions of extraterritorial rights were thus provided for. It was pointed out that although the Japanese Minister might give assurance that the Japanese police officers, if allowed to function in Chinese territory, would not infringe the rights of the Chinese police and of the local Chinese administration, both the spirit and form of Chinese sovereignty would be impaired and occasion given for misunderstanding upon the part of the Chinese people and to the detriment of friendly feelings between the two peoples.

At this time the Japanese already had certain police stations in Manchuria, and as to these the Chinese Government pointed out that they had repeatedly, but unsuccessfully, protested; and that, in fact, it was the presence of the Japanese police at Chengchiatun, far from the Railway Zone (where alone the Japanese had even a color of right to maintain armed forces) that had been responsible for the matter at issue.

Finally, however, the Chinese Government, without admitting that its nationals had been in the wrong, felt constrained to the following stipulations:

1. The General Commanding the 28th Division to be reproved.

2. The Chinese military officers responsible for this incident to be punished according to law. If the law provides for severe punishment such punishment will be inflicted.

3. An official proclamation to be issued in the districts where there is mixed residence for the information of the soldiers and the people in general to the effect that Japanese soldiers and subjects shall be accorded considerate treatment.

4. The Tuchun of Fengtien Province to express in an appropriate way his regret to the Governor of Kwantung and the Japanese Consul-General in Mukden, when they are together at Port Arthur, but the method of expression is left to the discretion of the said Tuchun.

5. A solatium of $500 is to be given to the Japanese merchant, Yoshimoto.[38]

Russo-Japanese Treaty of July 3, 1916. In 1916 Japan sought further to strengthen its position in Manchuria by coming to a more definite understanding with Russia than had been represented by the treaty of July 4, 1910.[39] In that treaty the two governments had agreed to cooperate in the maintenance of the *status quo* in Manchuria. In this new agreement of July 3, 1916,[40] as appears in the text which follows, the object of the High Contracting Parties is "the defense of their Far Eastern territorial rights and special interests."

The Imperial Governments of Japan and Russia, having resolved by united efforts to maintain permanent peace in the Far East, have agreed upon the following:

[38] For an account of the facts and significance of the Chengchiatun Affair, by the well-known authority, Mr. Putnam Weale, see *The Peking Gazette*, September 4, 1916. For official documents see the *Gazette*, January 29, 1917; also MacMurray, No. 1917/2.

[39] See *ante*, p. 328.

[40] MacMurray, No. 1916/9.

ARTICLE I. Japan will not be a party to any arrangement or political combination directed against Russia.

Russia will not be a party to any agreement or political combination directed against Japan.

ARTICLE II. In the event that the territorial rights or the special interests, in the Far East, of one of the Contracting Parties, recognized by the other Contracting Party, should be menaced, Japan and Russia will confer in regard to the measures to be taken with a view to the support or cooperation to be given each other in order to safeguard and defend those rights and interests.

Commenting upon this treaty Mr. K. K. Kawakami, one of Japan's quasi-official spokesmen in America, says that it can hardly be said to constitute an alliance since, unlike the Anglo-Japanese Alliance, it does not call specifically for the rendering of mutual armed assistance. He finds its chief significance in its wide territorial application: "while it is obvious that the new covenant aims chiefly to secure the respective interests of the contracting parties in Manchuria and Mongolia, its scope is not restricted to these two countries but covers the entire East."

Mr. Kawakami, employs the following rather frank reasoning to support his view that the interests of America are not affected by the new treaty. "Long before the conclusion of the new pact," he says, "America was unmistakably given to understand that no enterprise or investment, having political *or commercial*[41] importance, could be launched in Manchuria without due recognition of the preponderating interest held by Russia and Japan in that territory. This is, of course, not to say that both Japan and Russia are anxious to bar out Amer-

[41] Italics the author's.

ican capital or enterprise from Manchuria. It simply means that America must not ignore the peculiar position occupied by Russia and Japan, but must take it into consideration in launching any scheme which will seriously affect the political and economic status of Manchuria. That principle was fairly well established when Japan and Russia opposed the neutralization of the Manchuria railways proposed by Secretary Knox, and when they combatted the Chino-American project to construct a railway of 702 miles between Chinchow and Aigun."[42]

Secret Russo-Japanese Military Alliance of 1916. We now know, however, since the publication of secret diplomatic documents by the Russian Revolutionists in 1917, that the published treaty of July 3, 1916, was but one of two compacts entered into at the time by Japan and Russia. This secret treaty, which indicated that there had been other secret pacts, was in the following terms:

The Russian Imperial Government and the Japanese Imperial Government, aiming to strengthen the firm friendship between them, established through the secret agreements of July 17-30, 1907, June 21–July 4, 1910, and June 25–July 8, 1912, have agreed to supplement the aforesaid secret agreements with the following articles:

ARTICLE 1. Both the High Contracting Parties recognize that the vital interests of one and the other of them require the safeguarding of China from the political dominion of any third Power whatsoever, having hostile designs against Russia or Japan; and

[42] *Japan in World Politics*, p. 296. Here is a frank but substantially correct statement of how far away, in Japan's view, the status in Manchuria had developed from that provided for in the Portsmouth Treaty of 1905.

therefore mutually obligate themselves in the future at all times when circumstances demand, to enter with open-hearted dealings, based on complete trust, in order to take necessary measures with the object of preventing the possibility of occurrence of said state of affairs.

ARTICLE 2. In the event, in consequence of measures taken by mutual consent of Russia and Japan, on the basis of the preceding article, a declaration of war is made by any third Power, contemplated by Article 1 of this agreement, against one of the Contracting Powers, the other Party, at the first demand of its ally, must come to its aid. Each of the High Contracting Parties herewith covenants, in the event such a condition arises, not to conclude peace with the common enemy, without preliminary consent therefor from its ally.

ARTICLE 3. The conditions under which each of the High Contracting Parties will lend armed assistance to the other side, by virtue of the preceding article, as well as the means by which such assistance shall be accomplished, must be determined in common by the corresponding authorities of one or the other contracting parties.

ARTICLE 4. It is requisite to have in view that neither one nor the other of the High Contracting Parties must consider itself bound by Article 2 of this agreement to lend armed assistance to its ally, unless it be given guarantees by its allies that the latter will give it assistance corresponding in character to the importance of the approaching conflict.[43]

ARTICLE 5. The present agreement shall have force from the time of its execution, and shall continue to be in force until July 1-14, of the year 1921.

In the event the other of the High Contracting Parties does not deem it necessary twelve months prior to the end of said period, to declare its unwillingness to continue the present agreement in force, then the said agreement shall continue in force for a period

[43] Query: Was the reference here to the aid that Japan might or might not obtain from Great Britain in conformity with the obligations imposed by the Anglo-Japanese Alliance?

of one year after the declaration of one of the Contracting Parties disclaiming the said agreement.

ARTICLE 6. The present agreement must remain profoundly secret except to both the High Contracting Parties.[44]

Mr. Millard, commenting upon this secret treaty has this to say: "It was apparently made without the knowledge of the other Allied Powers. It can scarcely be assumed, however, that the 'third power' against which this treaty nominally was intended to protect the interests of Japan and Russia *in China* was one of the European allies of Japan and Russia. That construction would convict the nations that made it of downright underhandedness, or by logical inference of an expectation of betrayal of them by some of their allies. It was not directed against a nation in the Central Alliance: in that case this treaty would be unnecessary, for Japan and Russia already were allied and at war against the nations of the Central Alliance. There is no room for doubt as to the identity of the 'third power' mentioned in the treaty. It is directed at the United States." [45]

Additional Railway, Mining, and Other Rights in Manchuria Acquired by Japan. Mention has already been made of the fact that in addition to the railway from Changchun (Kwangchengtze) to Dalny and Port Arthur, its branches, and appertaining coal mines and other rights which she obtained from Russia by the Portsmouth Treaty of Peace of 1905, Japan later obtained the right to transform into a commercial road the light military

[44] MacMurray, 1916/9.

[45] *Democracy and the Eastern Question*, p. 67. It is, perhaps, significant that this alliance was timed to last just a day beyond the Anglo-Japanese Alliance.

line which she had built from the Korean border at Antung to Mukden. By still other agreements with China, Japan has, from time to time, secured still other railway, mining and other concessions in the Manchurian province, some of which deserve special mention.

Hsinmin-Mukden and Kirin-Changchun Railways. By an agreement of April 15, 1907,[46] between China and Japan, it was provided that the Chinese Government should purchase the Hsinmin-Mukden Railway, that had been constructed by Japan, and give to it the status of the lines that had been built by China herself, and that one-half of the capital needed for that part of the line east of the Liao River should be borrowed from the South Manchuria Railway Company. Also that China, being about to construct a railway from Kirin to Changchun, should borrow one-half of the capital needed from the same company. As security for these loans the properties of the roads and their earnings were to be pledged. It was also agreed that if the Kirin-Changchun line should later build branch lines or extensions, and if there should be lack of available capital on the part of the Chinese Government, application for the amounts needed would be made to the South Manchuria Railway Company. During the period of the loans, 18 and 25 years, respectively, the Engineer-in-Chief was to be a Japanese, and there was also to be a Japanese as accountant who should have "entire responsibility for the arrangement and oversight of the various accounts of the railways," but in his supervision of receipts and expenditures to consult and act with the Director-General. If there

[46] MacMurray, No. 1907/3.

should be default in the payment of principal or interest, the roads were to be handed over to the South Manchuria Railway Company until the default should be made good.

Mining and Railway Rights Obtained in 1909. By an agreement of September 4, 1909,[47] China engaged that should she undertake the construction of a railway between Hsinmin and Fakumen she would "arrange previously with the Government of Japan"; that the railway between Tashichao and Yinkow should be deemed a branch line of the South Manchuria Railway and be delivered up by Japan at the expiration of the term of concession of the main line, and that this line should be extended to the port of Yinkow. As regarded coal mines, the agreement provided that the mines at Fushun and Yentai might be worked by the Japanese Government, that Government undertaking to respect the full sovereignty of China and to pay to the Chinese Government a tax upon all coal mined, the amount of the tax to be separately arranged upon the basis of the lowest tariff for coals produced in any other places of China. It was also agreed that upon coal exported the lowest tariff of export duty for any other mines should be applied. Article 4 of the agreement read: "All mines along the Antung-Mukden Railway to the main line of the South Manchuria Railway, excepting those at Fushun and Yentai, shall be exploited as joint enterprises of Japanese and Chinese subjects."

Upon being asked by the American Government whether this agreement involved a monopoly of the right to open mines in the territories concerned, to the exclu-

[47] MacMurray, No. 1909/9.

sion of Americans or others, the Japanese Minister of Foreign Affairs assured the American Ambassador at Tokyo that the agreement "does not intend an exclusive claim to mines in Manchuria; that Japan will not oppose a concession by China to any third party finding minerals within the territory in question, and that it was only designed so that neither China nor Japan should operate independently of the other."

On November 18, 1909, the Chinese Government informed the American Chargé d'Affaires that it was the "understanding of the Imperial Chinese Government that the reference in the said agreement to joint Chinese-Japanese exploitation of mines along the two railways mentioned does not involve a monopoly of the rights and privileges of opening mines in the designated territory, nor confer any exclusive rights to mines therein upon Japanese subjects, but the mines in the territory mentioned may with the consent of the Chinese Government be exploited by third parties also."

Again, on November 25, 1909, the Japanese Government assured the American Government that the collieries at Fushun and Yentai were two of the mines assigned and transferred to Japan by the Portsmouth Treaty, and that the new agreement carried no new concession but merely recognized the already granted exclusive right of Japan to work them. "The general principles referred to in the agreement in question," it was declared, "which lacking the necessary confirmation of the governments concerned, remained for the time being ineffective, relate exclusively to known mines—only a few in number—which have been actually located by Japanese. . . . . The provisions of September 4 last, in reference to joint

exploitation of mines along the said railway do not and were not intended in any way or to any extent to involve a monopoly of the right to discover, open, and operate mines in Manchuria, to the exclusion of American citizens, or any other persons.''[48]

Five Additional Japanese Railways in Manchuria. On October 5, 1913, Japan, by an exchange of notes[49] with China, made an arrangement for the lending to the Government of China of funds by Japanese capitalists for the building of the following railways in Manchuria and Mongolia:

1. From Ssupingkai, via Chengchiatun, to Taonanfu.
2. From Jehol to Taonanfu.
3. From Kaiyuan to Hailungcheng.
4. From the Changchun station of the Kirin-Changchun Railway, across the South Manchuria Railway line, to Taonanfu.
5. From Hailung to Kirin.

The public announcement that these loans had been arranged was not made until October 2, 1918, when the Japanese Government gave out an authoritative statement. In this statement the Kaiyuan-Hailung and Hailung-Kirin lines are spoken of as a single concession, and, for the first time there is mention made of a line '' from a point on the Taonanfu-Jehol railway to a seaport.''

[48] *U. S. For. Rels.*, 1909, pp. 116-124. For agreement between Japan and China concerning mines and railways in Manchuria, and also with the Japanese firm of Okura & Co. regarding the Penhsihu mine, see MacMurray, 1909/9 and notes.

[49] MacMurray, No. 1913/9.

It is practically certain that the seaport referred to in the last named project will be either Chinchow or Hulutao, but more likely Hulutao, which is just south of Chinchow and only seven and a half miles from the Peking-Mukden Railway and connected with it by a branch line. Enough information has become public to make it reasonably certain that Japan is seeking from China the right to build a railway from Jehol to Peking. If this is done Japan will have a line parallelling the Peking-Mukden railway between Peking and Hulutao or Chinchow. In fact, Japan will then have railway communication from Korea to China's capital over lines wholly controlled, operated, and policed by herself.

The political, as well as the commercial importance of these projected Japanese lines in South Manchuria is thus seen. Commenting on the importance of the harbor of Hulutao, the well informed *Far Eastern Review* for November, 1918, has the following to say:

As a harbor Hulutao has a good natural depth of water—thirty feet at low tide—with a rise of eight or ten feet at spring tides. It has the advantage too, that it seldom freezes sufficiently to prevent steamers operating, observations showing that it is no unusual condition for open water to be at Hulutao when there are six inches of ice at Chinwangtao. The Chinese authorities at Mukden began improvement works to develop the port in October, 1910, but by the following October lack of funds and the outbreak of the revolution against the Manchus terminated work. In that year, however, considerable progress had been made with the breakwater, etc.,—but work was never resumed. It is known that had the Chinese authorities proceeded with the improvement of the port it would, next to Tientsin, have developed into the most important Chinese harbor in North China, and probably would have been a strong competitor with Dalny. Japanese engineers have frequently inspected the port and it has several times been reported that Japan

has had an eye on its future control. It need not then occasion any surprise to hear later on that Japan has made arrangements with the present government in Peking to conclude the work and utilize the port as a sea terminal for a line "from a point on the Taonanfu-Jehol Railway." With the port developed and in her control, and lines running therefrom to Eastern Inner Mongolia as planned, Japan would be in a strong commercial position as far as Manchuria is concerned, for she would then have direct avenues from Dalny and Hulutao to cover a great territory, the importance of which may be appreciated at a glance by looking at the map. It will be seen, then, that the territory embraced in the Chinchow-Aigun Railway (the American project blocked by Russia and Japan) is now completely taken up, with the exception of a small strip between Taonanfu and Tsitsihar, the Chinese having granted the southern section to the Japanese and the northern to the Russians, both contracts having been granted without any reference to American claims.

Ssupingkai-Chengchiatun Railway Loan Agreement. The loan agreement for the building of the Ssupingkai-Chengchiatun Railway was signed December 2, 1915,[50] the parties to it being the Yokohama Specie Bank and the Government of China. This agreement provided that the Chinese Government should authorize the bank to issue a forty-year, 5 per cent., gold loan of five million yen, the proceeds to be expended for the building of the road, and to be secured by a lien upon all movable and immovable property belonging to the railway. The Chinese Government was to guarantee the regular payment of both the principal and interest of the loan, and in case the revenue of the road should prove insufficient to meet these payments, to adopt the necessary measures to ensure their payment from other sources. The

[50] MacMurray, No. 1915/14.

Director-General of the railway, in agreement with the bank, was to appoint a Japanese as chief accountant who was to have charge of all revenues and expenditures of the road during the term of the loan. The building and management, it was provided, should be wholly in the hands of the Chinese Government who would appoint the Director-General. But he, in agreement with the bank, was to appoint a Japanese subject as Chief Engineer, who, in turn, was to have authority with the consent of the Director-General and Managing Director to make all appointments and dismissals with regard to minor positions. A Japanese subject was also to be the Traffic Manager of the road. The functions of the Chief Engineer were to cease with the completion of the road, but the Director-General was then to appoint a Japanese Engineer to supervise the engineering department under the orders of the Director-General and Managing Director.

In the construction and operation of the road, building materials, rolling stock, and other articles of Japanese manufacture were to be given the preference.

If, in the future, the line should be extended, or branches built, and foreign funds needed for the purpose, the option of supplying them was to be offered to the Japanese Bank.

These terms were substantially those of the standard railway loan agreements that have been made by China with the British, French, and American banks. Their significance to China was, however, different, or, at least, might become different, due to the fact that the Yokohama Specie Bank is virtually an agency of the Japanese Government, and, therefore, may possibly use the official

pressure of that Government to obtain an eventual modification of the terms.

Railway Loan Agreements of September 28, 1918. On September 28, 1918, was signed a preliminary loan agreement between the Government of China and a syndicate of Japanese banks [51] with regard to supplying the funds for the construction of the other railroads, concessions for the construction of which had been obtained by Japan in 1913.[52]

The route of the railway from a point on the Jehol-Taonan line to a certain seaport was to be decided upon by a consultation between the Chinese Government and the banks. The term of the loans was to be forty years; the loans to be secured by "all the property and revenue of the four railways concerned at present and in the future." Twenty million yen was to be at once advanced to the Chinese Government, the interest on this advance being eight per cent.

Kirin-Hueining Railway Loan Agreement. On June 18, 1918, China entered into a loan agreement [53] with certain of the Government controlled banks of Japan,[54] and therefore, to all intents and purposes, with the Japanese Government, according to which the banks were immediately to advance ten million dollars to the Chinese Government for the construction of a railway from Kirin

[51] The Industrial Bank of Japan, the Bank of Chosen, and the Bank of Taiwan.

[52] The text of this agreement was not made public by the Japanese Government until April 13, 1919. For translation, see MacMurray, No. 1918/15.

[53] MacMurray, No. 1918/9.

[54] See note 51 above.

to Hueining, that is, running through the Chientao region, north of Korea, and crossing the Tumen River into that country and traversing a fertile district with abundant iron and other mineral resources. The loan was to bear seven and a half per cent. annual interest, and to run for forty years. The banks, in order to make this loan, were authorized to issue bonds secured by the Chinese Government which were to bear five per cent. interest. The money thus advanced was made immediately available to the Chinese Government and without restriction as to its expenditure, and in fact was used by that Government for current expenses and not for the purposes for which it was ostensibly borrowed.

In addition to being an obligation upon the part of the Chinese Government, the advance was to be secured by the properties of the proposed railway—when built. In general, the other features of the loan were to be those of the Tientsin-Pukow Railway Loan Agreement of 1908. It was, however, provided that the actual amount of funds to be received by the Chinese Government out of the loan issue should be more profitable to it than what had been stipulated in the Ssupingkai-Chengchiatun Railway loan agreement.

Gold Mining and Forestry Loan. On August 2, 1918, was signed an agreement [55] between the Government of China and a syndicate of Japanese financial interests, providing for a loan of 30,000,000 yen in Japanese gold, for the ostensible purpose of establishing a fund for the development of gold mining and forestry in the two Manchurian provinces of Heilungkiang and Kirin. As security

[55] MacMurray, No. 1918/11.

for the loan were pledged the gold mines and national forests in the two provinces and the Chinese Government's revenue from these mines and forests. It was further provided that should the Chinese Government, within the period of the operation of the loan agreement (ten years) desire to make a loan from others in respect to mines, national forests or their revenues, or to dispose of them, the Japanese financial interests should first be consulted.

South Manchuria Railway Company. In order to estimate the extent and character of the political and economic influence exerted by Japan in Manchuria it is necessary to consider the manner in which she has unified her interests and their management under a governmental instrumentality, the South Manchuria Railway Company.

In no other country in the world, not even in Germany before the war, are large commercial interests so closely taken under governmental control and aided by subsidies from the public treasury and granted other preferential rights, as is the case in Japan. And especially is this true of the railway and other interests, nominally private in character, which the Japanese have obtained in China, for here the political and economic interests of Japan are so closely united as to be treated as inseparable.

For the exploitation in South Manchuria of the rights which she obtained from Russia, Japan at once established a joint-stock corporation in which the Government was to own an amount of stock sufficient to enable it at all times to control its operations. That this company should be given this task had been provided for in the secret protocols annexed to the Komura treaty of December 22, 1905, between China and Japan.

The sanction for the organization of the company was given by a Japanese imperial ordinance of June 7, 1906.[56]

This ordinance provided that the Government should cause the organization of the company, the shares of which were to be registered and to be owned only by the Japanese and Chinese Governments or by subjects of Japan or China. In fact the Japanese Government now owns four-fifths of the paid up stock of the company. The head office was to be at Tokyo, and the Japanese Government, subject to imperial sanction, was to appoint the president and vice-president. The Government was also to appoint directors from among the shareholders, and supervisors who were to supervise the business of the company and to have the right at any time to examine the books and accounts of the company. Also the Government was to have the right to issue such orders as might be deemed necessary "to superintend the business of the company," and to cancel orders of officers of the company and to dismiss them from office. In short, the Japanese Government was to lack no power to exercise such control and direction as it might desire over the operation of the railways and mines in Manchuria which, it was provided, should be handed over to the company.

By a Government order of August 1, 1906, the company was authorized to operate the following railways:

Dairen-Changchun,
Nankuanling-Port Arthur,
Tafangshen-Liushutun,
Tashichiao-Yingkow,
Yentai-Yentai Coal Mine Railway,

[56] The text of this ordinance is given in MacMurray, note to No. 1905/18.

Sukiatun-Fushun,
Mukden-Antunghien.

"For the convenience and profit of the railways" the company was also authorized to engage in the following accessory lines of business: mining, especially the operation of the coal mines at Fushun and Yentai; water transportation; electrical enterprises; sale on commission of the principal goods conveyed by the railways; warehousing; business relating to the land and buildings on the land attached to the railways.

Within the areas of lands used for the railways or the accessory lines of business, the company was also ordered to make necessary arrangements for engineering works, education, sanitation, etc.; and to defray the expenses thus entailed, the company was authorized, subject to the permission of the government, to "collect fees of those who live within the area of lands used for the railways and the accessory lines of business, or make any other assessments for necessary repairs."

The total amount of the company's capital stock was fixed at 200,000,000 yen, of which 100,000,000 yen were to be furnished by the Imperial Japanese Government—this amount, however, not to be paid in cash, but to be represented by the railways and mines and lands turned over to the company. If, during a period of fifteen years the shareholders, other than the governments of China and Japan, should receive a dividend of less than six per cent. per annum upon the amounts paid by them for their stock, the Japanese Government was to make good the deficiency up to the six per cent.; and if, for any reason, the dividend should not exceed six per cent., no

dividends should be paid on the shares owned by the Japanese Government.

The Japanese Government was also to guarantee the payment of interest on the debentures which the company might issue for the reconstruction of the railways or for the operation of the accessory business, and, if necessary, the government was to guarantee the repayment of the principal as well. The plans of the company's business, the estimates of the costs of operation, the budgets of income and expenditures, and the rates of dividends to be paid were all to be submitted to the Japanese Government for approval, and at all times, when demanded, the railways and other properties of the company were to be placed at the service of the Government.

The foregoing requirements were embodied in the Articles of Incorporation of the company, which were issued on November 13, 1906; and on April 1, 1907, the railways were formally transferred to the company.

Fushun and Yentai Coal Mines. The chief coal mines owned and operated by the company are the Fushun and Yentai mines. These, as described in the *Japan Year Book* for 1918 are as follows:

The Fushun Colliery is situated about twenty-two miles east of Mukden, as the crow flies, runs for about twelve miles parallel to the river Hun, and contains deposits of eighty to one hundred and seventy-five feet in thickness, an average of about one hundred and thirty feet. The storage is estimated conservatively at eight hundred million tons. At present five pits are in full operation, with the total output of six thousand tons a day, of which the two pits, Togo and Oyama, both being sunk in 1910, each yields two thousand tons a day. The quality, too, is excellent, being of strong caloric power and containing very little sulphur.

The Yentai Coal Fields exist north-east of Liaoyang and can be reached in an hour by rail from the Yentai station. The seams number sixteen, of which four are workable, i. e., first seam of five feet, and second of four to six feet, third of three to eight feet, and fourth of five feet. The coal is soft and pulverizable and emits but little smoke. The daily output according to the report at the end of March, 1915, reached two hundred and sixty tons.[57]

The total of land belonging to the company, according to the *Japan Year Book*, is 62,351,825 *tsubo*—a *tsubo* or *bu* being a little less than four square yards.

Other Activities of the South Manchuria Railway. To the foregoing activities of the South Manchuria Railway Company may be added the maintenance of a regular line of steamers between Dairen and Shanghai, via Tsingtao, and a fleet of vessels engaged in the South China coastwise trade.

In the *Japan Year Book* for 1918 it is stated (p. 719) that the company was maintaining in 1916 in the railway zone some 14 hospitals, 17 primary schools, 10 Chinese (common) schools, 28 business schools, 9 girls' practical schools, one medical school at Mukden and a technical school and a teachers' training institute at Dairen. Besides these the company was maintaining a polytechnical laboratory, two agricultural experiment stations and farms, and 15 water supply works.

Authority of the Government-General of Kwantung Over the Manchurian Railways. By various Imperial

[57] P. 179. The Penhsihu coal fields in Manchuria are not operated by the South Manchurian Railway Co., but jointly by the Chinese Government and the Japanese Okura firm of Tokyo. The output from these fields is about five hundred tons a day.

Ordinances issued by the Japanese Government[58] the following provisions relating to the status of the South Manchuria Railway Company were put into force:

The Governor-General of Chosen (Korea) has been authorized to entrust to the company the construction, improvement, preservation and operation of all the railways and the undertakings connected therewith under his jurisdiction. The Manchurian and Korean railways are thus united into one system. The previously existing Bureau of Railways of the Chosen Government has been abolished.

By Ordinance No. 196, effective on September 1, 1906, the organization of the Government-General of Kwantung was effected. This ordinance provided that the Governor-General of the leased territory should "take charge of the protection and supervision of the railway lines in South Manchuria," and supervise the affairs of the railway company. He was further authorized, when he should deem it necessary, to employ military force "for the protection or supervision of the railway lines." In this same ordinance it was provided that Japanese consular officials stationed in South Manchuria might, in addition to their regular position, be appointed as secretaries of the Government-General. And, in this connection, it may also be noted that the designation of persons to be appointed Japanese consuls in Manchuria has been vested in the South Manchuria Railway Company. This creates the rather remarkable situation, not to speak of other results, that if one has a claim or grievance against the company he is obliged, under extraterritorial princi-

[58] For translations of such ordinances see notes to MacMurray, No. 1905/18.

ples, to take the case for hearing before a judge who is practically an official of that company. Ordinance 196 further provided that consuls appointed also as secretaries of the Government-General of Kwantung should "take charge of police affairs along the railway lines under the instructions of their superiors."

The control of the Governor-General of Kwantung over the Manchurian railways was made still more explicit by an ordinance of July 31, 1917, which provided that he should have "control of the protection and supervision of the railway lines in South Manchuria, and have charge of the operation of the South Manchuria Railway Company.

CHAPTER XII

Former German Rights and Interests in Shantung

Germany no longer has a Sphere of Interest in China, but it will none the less be important to consider what rights she possessed before the war, because these rights have now, by the Treaty of Versailles, been transferred to Japan.

The German sphere was practically confined to the Province of Shantung and dated from the time of the lease by her in 1898 of the Kiaochow area. In addition to providing for this lease, the Convention of 1898 [1] granted to Germany important railway, mining and general commercial and industrial preferential rights. These three classes of rights we shall consider.

Railway Rights. Concessions were granted by the Chinese Government for two railways: one to run from Kiaochow and Tsinanfu to the boundary of Shantung Province via Weihsien, Tsinchow, Poshan, Tsechuan and Suiping; and the other to connect Kiaochow with Ichowfu, whence an extension might be built to Tsinan through Laiwuhsien. The purpose of building these lines was declared to be "solely the development of commerce," and that, "in constructing this railroad there is no intention to unlawfully seize any land in the Province of Shantung."

[1] For translation from the official German text as published in behalf of the Chinese Government by the Imperial Maritime Customs, see MacMurray, No. 1898/4.

In order to carry out the construction and operation of these railroads, the Lease Agreement provided that a Sino-German company should be formed, in which both German and Chinese merchants should have the right to invest money and participate in the appointment of directors for the management of the roads.

In accordance with this understanding the Shantung Eisenbahn Gesellschaft was chartered on June 1, 1899, by the German Government,[2] this company being organized by the Deutsch-Asiatische Bank.

The capital of this company as chartered by the German Government was fixed at fifty-four million marks; the shareholders were to be Germans or Chinese; profits in excess of five per cent. were to be shared with the German Colonial Administration of Kiaochow; and, so far as possible, German material was to be used in equipment and construction. Under this charter the line from Tsingtao to Tsinanfu, a distance of 245 miles, and a branch line to the Poshan coal fields, a distance of 36 miles, were built and opened to traffic in 1904.

By an understanding arrived at March 21, 1900,[3] between the railway company and the Chinese authorities, and embodied in a written instrument of that date, it was provided that, for the present, the railways should be under exclusive German management, but that Chinese officials should be allowed to participate therein as soon as shares of the company to the amount of Taels 100,000 had been purchased by Chinese; and also that, should branches of the administration of the company be established in Shantung, one Chinese official should be dele-

[2] For translation of the charter, see MacMurray, note to 1900/3.
[3] MacMurray, No. 1900/3.

gated to each one of them. It was further declared that the company should not be allowed to purchase more land than was necessary for the railway enterprise and its future extensions. At railway stations where customs offices might be established, the railway officials were to give their aid in collecting the legal dues. In accordance with the general obligations and rights of foreigners in China, foreigners travelling or doing business in the interior of the Province of Shantung were to obtain passports duly sealed by the proper Chinese and German authorities. Chinese subjects employed outside the leased territory by the railway company, in case of violation of Chinese law, were to be subject to the jurisdiction of the Chinese district magistrate. The following articles of this agreement with reference to the use of foreign or Chinese troops deserve quotation:

ARTICLE 16. Troops eventually necessary for the protection of the railway will be stationed by the Governor of the Province of Shantung. Therefore outside the 100 li zone no foreign troops shall be employed for this purpose. The Governor of the Province of Shantung binds himself to take effective measures during the period of surveying as well as when the railway is under construction or opened for traffic to prevent any damage being done to it by the mob or by rebels.

ARTICLE 17. Development of trade and communications being the only purpose of the railway, no transport of foreign troops and their war materials shall be allowed on it. The Railway Administration however is not to be held responsible for such transport when brought into a position of constraint by war or similar circumstances. On the other hand the Governor of the Province of Shantung will not be responsible for the protection of sections of the railway being in the hands of the enemy. The conditions of this Article are not to be applied to the section of the railway within the 100 li zone.

ARTICLE 27. In the German leased territory the rights of sovereignty are safeguarded by the Governor of Tsingtao. In the districts of the remaining part of the Province of Shantung through which the railway is running, the rights of sovereignty are safeguarded by the Governor of the Province of Shantung.

With regard to the railway from Tsingtao to Tsinan this important fact is to be noticed, which Overlach calls attention to,[4] that it is the only road in China over which China has not definitely reserved the right, at some future time, to assume sole control. However, by Article XXVIII of the agreement of March 21, 1900, between Germany and China, providing regulations for the Kiaochow-Tsinan Railway, it was declared that the Chinese Government should have the right to buy back the line, but that this matter should be later separately considered,—which it never was.

In 1913 Germany, by an agreement of December 31,[5] obtained from the Chinese Government two additional railway concessions: one for a road from Koami to Ichowfu and thence to Hanchuang, thus joining it up with the Tientsin-Pukow line; and the other from Tsinanfu to some point on the Peking-Hankow Railway. These roads, it was determined in the final agreement, should be owned by the Chinese Government but be built with German capital and materials and under the supervision, during construction, of a German Engineer-in-Chief. As regards construction, it was agreed that the German Government should be accorded the same terms and conditions as those embodied in the railway loan agreement with the Belgians on September 24, 1912.[6]

[4] *Foreign Financial Control in China*, p. 145.
[5] MacMurray, No. 1913/16.
[6] The Lung-Tsing-U-Hai Railway.

This meant that a German Traffic Manager, a German Engineer-in-Chief, and a German Chief Accountant should be employed, and, after the construction was completed, to remain in service as long as the loan agreement continued in force. It was also provided that if, thereafter, the Chinese Government should make railway loan agreements with any other countries, the terms of which concerning construction and traffic management might be more favorable than those in the present agreement, the same privileges should be accorded to the two railways concerned.[7]

In return for these two additional railway concessions Germany declared that it surrendered all other rights of railway construction granted in the original convention of 1898, as well as certain other railway construction options which it had in other parts of China.

It has been rumored, but not yet (1920) officially admitted, that in June, 1914, Germany also obtained from the Chinese Government an option with regard to the building westward of the Tsinanfu-Shuntehfu line, the Chefoo-Weihsien line, and the westward extension of the Tsining-Kaifengfu line.

In further definition of Germany's railway interests in Shantung may be mentioned the agreement between the German and British bankers of September 2, 1898, elsewhere referred to; [8] and the agreement of May 18, 1899, between China, on the one side, and German and British banking interests, on the other side, according to which the Shantung section of the Tientsin-Pukow (Chinkiang)

[7] The transference to Japan of these railway rights is covered by the Sino-Japanese Agreement of September 28, 1918.

[8] See p. 284.

railway was to be built by the Germans, and the southern section by the British, with the proviso, however, that, after construction, the two sections should be operated jointly.[9]

German Mining Rights in Shantung. Article IV, Section II, of the Lease Agreement of 1898 provided:

> The Chinese Government will allow German subjects to hold and develop mining property for a distance of thirty li from each side of those railways [Tsingtao-Tsinan and Tsingtao-Chinchow with extension to Tsinan] and along the whole extent of those lines. The following places where mining operations may be carried on are particularly specified. Weihsien and Poshan along the line of the northern railway from Kiaochow to Tsinan, and Ichow, Laiwuhsien, etc., along the southern or Kiaochow-Ichow-Tsinan line. Both German and Chinese capital may be invested in these mining and other operations, but as to the rules and regulations relating thereto, this shall be left for future consideration. The Chinese Government shall afford every facility and protection to German subjects engaged in these works, just as provided for above in the article relating to railway construction, and all the advantages and benefits shall be extended to them that are enjoyed by the members of other Chinese-foreign companies. The object in this case is also the development of commerce solely.

By an Imperial German decree of March 13, 1913, the Shantung Railway Company was given charge of the exploitation of the German mining rights in Shantung, and authorized to increase its capital to sixty million marks. Previously to this, these mining rights had been vested in a German company—the Schantung Bergbau Gesellschaft—which had been chartered June 1, 1899.[10] By its charter this company was obliged to furnish coal

[9] Rockhill, I, p. 355. MacMurray, No. 1908/1, note.
[10] For charter, see MacMurray, note to No. 1900/4.

to the German navy at a price five per cent. below the market price at Tsingtao, and to turn over five per cent. of its profits as a contribution for the harbor and other administrative expenses of the leased territory.

Before its liquidation and surrender of its rights to the Railway Company, the Mining Company had entered into an agreement with the Chinese Government, dated July 24, 1911,[11] under which the company surrendered all its general mining privileges, that is, along the entire length of the German railways in Shantung, and, in exchange, had obtained specific mining rights in Fangtzu, Tzuchuan, Chinlingchen, and Changtien. As regards the zones within which the mining rights were surrendered, it was provided that the existing Chinese mines should be closed, and that no mines should be opened upon a large scale before 1920, after which time, " if the Chinese Government or Chinese merchants wish to carry on mining operations in the areas relinquished by the company according to this agreement, whenever capital is insufficient they must borrow German capital. If they require supplies of machinery they must purchase German materials, and if they wish to engage foreign experts they must engage Germans."

German Commercial and Industrial Preferential Rights in Shantung. As to these the Convention of 1898 provided as follows:

" The Chinese Government binds itself in all cases where foreign assistance, in persons, capital or material, may be needed for any purpose whatever within the Province of Shantung, to offer the said work or supply-

[11] For translation see MacMurray, note to No. 1900/4.

ing of materials, in first instance to German manufacturers and merchants engaged in undertakings of the kind in question. In case German manufacturers or merchants are not inclined to undertake the performance of such works or the furnishing of materials, China shall then be at liberty to act as she pleases."

As has been earlier mentioned, Great Britain, at the time of the leasing by her of Weihaiwei, took pains to notify the German authorities that the lease was not to be taken as evidencing an intention of injuring or contesting the rights and interests of Germany in the province or of creating difficulties for her in the province, and that she, Great Britain, had no intention of building a railway from her leased area into the interior. This attitude of Great Britain is, however, to be interpreted in light of the fact that she did not know, at that time, that Germany, by the lease agreement of 1898 with China, had obtained special commercial rights in the province. The text of the portions of the Kiaochow Treaty relating to these industrial and economic preferences was not made public until 1908. And it cannot be doubted that this ignorance upon the part of Great Britain, in part at least, explained her willingness, in September, 1898, to support her bankers; in the agreement between them and the German syndicate interested in the building of railways in China, that the German Sphere of Interest in respect to railway construction should include the Province of Shantung.[12]

On October 16, 1900, that is, during the Boxer outbreak, Great Britain signed an agreement with Germany in which she declared it to be " a matter of joint and

[12] MacMurray, note to No. 1900/5.

international interest that the ports on the rivers and littoral of China should remain free and open to trade and to every other legitimate form of economic activity for the nationals of all countries without distinction," and that the two countries would exercise their influence to sustain this principle for all Chinese territory.[13] This agreement is more specifically considered in the chapter dealing with the " Open Door."

The assurances given by the German Government of its intention within its sphere and leased area to respect the " open door policy " have been earlier referred to.

In 1902 (April 19), in a memorandum to the United States Government, the German Government disavowed a claim of exclusive commercial and industrial rights in Shantung. The provisions of the Convention of 1898, it was declared " merely bind China to offer the works and schemes concerned to Germans, but leave to persons of other nationalities absolute freedom to obtain the contracts or the furnishing of material by offering more favorable terms." [14]

Upon terms which have not yet been made public, the Germans obtained from China the right to lay submarine cables from Tsingtao, and at the present time there are such cables to Chefoo and Shanghai. By special provision, in the Treaty of Versailles, these are to pass to Japan.

---

[13] MacMurray, No. 1900/5.
[14] MacMurray, No. 1898/4.

CHAPTER XIII

Japan's Position in Shantung

Japan's claim to a sphere of interest in Shantung dates only from 1914, when she ousted the Germans from their leased area and herself took possession not only of that area but of the other German rights in the province. Because of the very serious disputes which have arisen with regard to Japanese rights in this region, it will be necessary to consider with some degree of particularity the circumstances attending the establishment of Japanese interests in this part of China.

Whether or not Japan came into the war upon the request of Great Britain will not be certainly known until the foreign offices of those countries see fit to make public the correspondence of the time. It is, indeed, uncertain whether or not, had Japan been asked to do so, she was obligated to that action by the Anglo-British Treaty of Alliance. Japanese public men have very generally stated that Japan's entrance was dictated by her sense of obligation under that treaty, but Viscount Ishii, in an important public speech in America, assured his hearers that the Alliance imposed no such obligation. Whatever the facts may have been regarding these matters, it is certain that Japan quickly saw that it would be to her own interest to destroy German influence in the Far East and to lay the basis at least for a claim for herself of those interests or certain of them at the end of the war.

On August 15, 1914, therefore, Japan presented an

ultimatum[1] to Germany in which she "advised" that country to withdraw her armed vessels from Japanese and Chinese waters or to disarm those which could not be withdrawn, and "to deliver on a date not later than September 15 to the Imperial Japanese authorities, without condition or compensation, the entire leased territory of Kiaochow with a view to the eventual restoration of the same to China."

On the same day Count Okuma, the Premier of Japan, sent to the East and West News Bureau of New York (a Japanese publicity office) a message in which he said: "Japan's proximity to China breeds many absurd rumors; but I declare that Japan acts with a clear conscience, in conformity with justice and in perfect accord with her ally. Japan has no territorial ambition, and hopes to stand as the protector of peace in the Orient."

In a public address in Tokyo, three days later, he declared: "Japan's warlike operations will not extend beyond the limits necessary for the attainment of the object of the defense of her own legitimate interests. The Imperial Government will take no such action as could give to a third party any cause for anxiety or uneasiness regarding the safety of their territories or possessions."

Count Okuma's Message to the American People. In order that Americans especially might be still further assured of her intentions, Count Okuma, on August 24, cabled to the *New York Independent* the following message:

I gladly seize the opportunity to send, through the medium of *The Independent,* a message to the people of the United States, who have always been helpful and loyal friends of Japan.

[1] MacMurray, note to No. 1914/9.

It is my desire to convince your people of the sincerity of my Government and of my people in all their utterances and assurances connected with the present regrettable situation in Europe and the Far East.

Every sense of loyalty and honor obliges Japan to co-operate with Great Britain to clear from these waters the enemies who in the past, the present and the future menace her interests, her trade, her shipping and her people's lives.

This Far Eastern situation is not of our seeking.

It was ever my desire to maintain peace as will be amply proved; as President of the Peace Society of Japan I have consistently so endeavored.

I have read with admiration the lofty message of President Wilson to his people on the subject of neutrality.

We, of Japan, are appreciative of the spirit and motives that prompted the head of your great nation and we feel confident that his message will meet with a national response.

As Premier of Japan, I have stated and I now again state to the people of America and of the world that Japan has no ulterior motive, no desire to secure more territory, no thought of depriving China or any other peoples of anything which they now possess.

My Government and my people have given their word and their pledge, which will be as honorably kept as Japan always keeps promises.

Japan's Actions in Shantung. The purposes of this volume do not make it necessary to describe the military operations leading to the fall of Tsingtau and to the occupation by the Japanese of the entire leased territory of Kiaochow. It is, however, pertinent to observe that the Japanese troops were landed at Lungkow on the northern coast of Shantung, far from Tsingtau, and in disregard of the protests of neutral China. Following the precedent of the Russo-Japanese War China had declared a " war zone " within which she gave her voluntary consent to have military operations conducted. No attention, how-

ever, was paid by the Japanese to the limits thus set; and, in fact, Japanese troops were sent not only against Tsingtau but westward along the Tsingtau-Tsinanfu Railway until Tsinanfu, the capital of the province and more than two hundred and fifty miles from Tsingtau, was occupied.[2]

These actions were disconcerting to the Chinese and disquieting as well to the other Powers. This feeling was soon increased by a number of other incidents.

It will be remembered that when Tsingtau had been taken possession of by the Germans an understanding was arrived at with the Chinese Maritime Customs according to which the chief of the customs office at Tsingtau was to be of German nationality. Germany having been ousted from that city, and its restoration to China having been promised by the Japanese, that is, the Japanese being supposed to be only in temporary military—not civil—occupation, the Chinese Government suggested an Englishman as Customs Commissioner at Tsingtau. To this Japan objected. China then proposed a Japanese as Commissioner with an Englishman as Deputy Commissioner. This also was objected to by Japan. Other suggestions were made by China, all of which were unacceptable to the Japanese Government, which finally made it plain that it would not be satisfied unless it was given the right to appoint the Commissioner and his staff who should be Japanese. This was unfair to the other members of the Maritime Customs service as regarded their rights of promotion on the

[2] A small contingent of British troops participated in the expedition against Tsingtau, which, however, landed within the leased area, and confined their objectives to the capture of that territory.

grounds of seniority of service, and also highly objectionable to China, and, it may be observed, to the other Powers, since confidence was not felt that the customs regulations would be rigorously and impartially applied to Japanese merchants. China then finally suggested that a Japanese be appointed as Commissioner of Customs at Tsingtau, and that eight members of the Japanese Customs Department be appointed in the Chinese customs in the lowest grade, but even this offer was refused, and Japanese officials continued to administer the customs of Kiaochow until the agreement of August 6, 1915,[3] by which the Japanese were substituted for the Germans in the rights under the old Tsingtau customs agreement.[4] One result has been the smuggling or introduction into China from Japan in the form of military supplies or through the parcel post of enormous quantities of morphine in violation of the laws of China and of international covenants to which Japan is herself a party.

Still more disconcerting to China was the fact that the Japanese continued to operate the Shantung Railway from Tsingtau, and that they erected military barracks at various points along the line and retained considerable numbers of troops at those points. This railway, it is to be observed, was not the property of the German Government and therefore subject to confiscation under military law, but was a private concern, the shares of which were owned by German and Chinese individuals.[5]

To a very considerable extent, under German operation, Chinese had been employed in the operation of the

[3] MacMurray, No. 1915/12. [4] MacMurray, No. 1899/2.

[5] There is good ground for believing, however, that the Chinese shareholders were men of straw, the real owners being private German citizens. (See *Far Eastern Review*, Nov., 1914).

line. After seizure by the Japanese these were, in practically every case, replaced by nationals of Japan.

The Japanese military forces assumed also the administration of the postal and telegraphic services within the leased area. The control of these was surrendered to the Chinese by an agreement of March 26, 1917.[6]

Finally, and most openly disregardful of the sovereign rights of China, was the institution by Japan of civil governments at various points in Shantung. This civil administration was a subordinate branch of the military administration, that is, a mode of exercising military occupation, and was defended by the Japanese as such. This defense, however, did not touch the essential point that the Japanese, without the consent of China and against her protests, were exercising police powers and the rights of taxation outside of the leased area.

Japanese Deny Obligation to Return Kiaochow to China. But not in facts alone were there indications that Japan intended a more than temporary military occupation, and was prepared to exercise a jurisdiction in the province which the Germans themselves had never claimed.[7] There came from Japan official pronouncements that the Japanese Government did not consider itself bound by any engagement eventually and unconditionally to restore the leased area to China.

On December 9, 1914, Baron Kato, the Minister of Foreign Affairs, was interrogated in the Japanese Parliament as to the intentions of the Government with refer-

[6] MacMurray, No. 1917/5.

[7] Japan assumed and exercised mining rights which Germany, sometime before the war had formally surrendered to China.

ence to the restoration to China of Tsingtau, and in reply said:

> Whether the Government is going to restore Tsingtau to China or not . . . is to be settled in the future and I am not in a position to give any definite reply to this question. When further pressed to declare whether the Japanese Government had made any binding promises in the matter, he replied: "I assure you that the Government has never entered into any such contract with any foreign countries about the question of Tsingtau. The reason for which the government in its ultimatum requested Germany to restore the leased territory to China is just similar to that for which years ago the three Powers jointly requested Japan to restore to China the Liaotung Peninsula which Japan had occupied during the China-Japanese War. Mr. Ogawa said that if Germany accepted the Japanese ultimatum, the result would have been rather difficult to Japan, because there is a special contract between Germany and China as to the restoration of Tsingtau to China. But as you may know from the terms of the government's ultimatum to Germany our intention was to cause Germany to restore Tsingtau to China without any conditions or compensations whatever.

The language which has been quoted was by no means free from ambiguities, but the intimation was clearly given that inasmuch as Germany had not made the surrender in obedience to Japan's ultimatum, and a military operation on the part of Japan had been necessary before the Germans were driven out, the Japanese Government held itself no longer bound by the declarations in that ultimatum.

Group I of the Twenty-One Demands of 1915. The apprehensions of the Chinese as well as of the other interested Treaty Powers were seen to be fully justified when, early in 1915 (January 18), came the presentation to China by Japan of the Twenty-One Demands. The

first group of these demands related to Shantung, and was as follows:

The Governments of Japan and China being desirous of maintaining the peace of Eastern Asia and of further strengthening the friendly relations existing between the two neighboring nations, agree to the following articles:

1. The Chinese Government agrees that when the Japanese Government hereafter approaches the German Government for the transfer of all rights and privileges of whatsoever nature enjoyed by Germany in the Province of Shantung, whether secured by treaty or in any other manner, China shall give her full assent thereto.

2. The Chinese Government agrees that within the Province of Shantung and along its sea border, no territory or island or land of any name or nature shall be ceded or leased to any third Power.

3. The Chinese Government consents to Japan building a railway from Chefoo or Lungkow to join the Kiaochow-Tsinanfu Railway.

4. The Chinese Government agrees that for the sake of trade and for the residence of foreigners certain important places shall be speedily opened in the Province of Shantung as treaty ports, such necessary places to be jointly decided upon by the two governments by separate agreement.

China's Reply. As to the first of these demands the Chinese Government maintained that the matter was one which should be left for *post bellum* settlement. This being rejected by the Japanese representatives, the Chinese asked that the following declaration be made:

The Japanese Government declares that when the Chinese Government give their assent to the disposition of interests above referred to, Japan will restore the Leased Territory of Kiaochow to China, and further recognizes the right of the Chinese Government to participate in the negotiations referred to above between Japan and Germany.

In other words, it was asked that Japan reaffirm the declaration made by her in her ultimatum of August 15, 1914, to Germany.

The Chinese representation also asked that, until the restoration of Kiaochow to China, the maritime customs, telegraphs, and post offices should continue to be administered as before the war, and that Japanese troops outside of the leased area be withdrawn. All of these proposals were rejected by the Japanese representatives.

To the second demand that a promise be given by China that within the Province of Shantung and along its sea border no territory or island or land of any name or nature should be ceded or leased to any third Power, China gave her assent.[8]

To the third demand China expressed her willingness to assent provided she be given the privilege of building the railroad from Chefoo to Lungkow to connect with the Tsingtau-Tsinanfu Railway, in which case Japan was first to be approached for the necessary capital. This the Japanese agreed to.

To the fourth demand that additional ports in Shantung be opened to international trade, China assented, although, as she observed, "this was a demand on the part of Japan for privileges additional to any that hitherto had been enjoyed by Germany and was not an outcome of the hostilities between Japan and Germany,

[8] It is of interest to note that when, finally, Japan was obliged to admit the fact which at first she had denied, that she was making a series of demands upon China, the statement of these demands which she supplied to the other Treaty Powers as regards this non-alienation agreement, was to the effect that no cession or lease would be made to any foreign Power, which, of course, would include Japan. The demand that was actually made was that there would be no lease or cession to any *third* Power, the way thus being left open for leases or cessions to Japan.

nor, in the opinion of the Chinese Government, was its acceptance essential to the preservation of peace in the Far East."[9]

Revised Demands. In the revised demands, presented April 26, Group I was as follows:

The Japanese Government and the Chinese Government, being desirous of maintaining the general peace in Eastern Asia and further strengthening the friendly relations and good neighborhood existing between the two nations, agree to the following articles:

ARTICLE 1. The Chinese Government engages to give full assent to all matters upon which the Japanese Government may hereafter agree with the German Government, relating to the disposition of all rights, interests and concessions, which Germany, by virtue of treaties or otherwise, possesses in relation to the Province of Shantung.

ARTICLE 2. (Changed into an exchange of notes.) The Chinese Government declares that within the Province of Shantung and along its coast no territory or island will be ceded or leased to any Power under any pretext.

ARTICLE 3. The Chinese Government consents that as regards the railway to be built by China herself from Chefoo or Lungkow to connect with the Kiaochow-Tsinanfu railway, if Germany is willing to abandon the privilege of financing the Chefoo-Weihsien line, China will approach Japanese capitalists to negotiate for a loan.

ARTICLE 4. The Chinese Government engages, in the interest of trade and for the residence of foreigners, to open by China herself as soon as possible certain suitable places in the Province of Shantung as Commercial Ports.

(Supplementary Exchange of Notes.)

The Places which ought to be opened are to be chosen, and the regulations are to be drafted, by the Chinese Government, but the Japanese Minister must be consulted before making a decision.

[9] China's official History of the Sino-Japanese Treaties.

Resulting Treaty and Notes. In their final form, as embodied in the treaty entered into as the result of the ultimatum by Japan to China, the provisions relating to Shantung were as follows:[10]

ARTICLE 1. The Chinese Government agrees to give full assent to all matters upon which the Japanese Government may hereafter agree with the German Government relating to the disposition of all rights, interests and concessions which Germany, by virtue of treaties or otherwise, possesses in relation to the Province of Shantung.

ARTICLE 2. The Chinese Government agrees that as regards the railway to be built by China herself from Chefoo or Lungkow to connect with the Kiaochow-Tsinanfu railway, if Germany abandons the privilege of financing the Chefoo-Weihsien line, China will approach Japanese capitalists to negotiate for a loan.

ARTICLE 3. The Chinese Government agrees in the interest of trade and for the residence of foreigners, to open by China herself as soon as possible certain suitable places in the Province of Shantung as Commercial Ports.

ARTICLE 4. The present treaty shall come into force on the day of its signature.

In an "exchange of notes" of even date with the treaty, China promised that "within the Province of Shantung or along its coast no territory or island will be leased or ceded to any foreign Power under any pretext."

Also that the places in Shantung to be opened as commercial ports "will be selected and the regulations therefor will be drawn up, by the Chinese Government itself, a decision concerning which will be made after consulting with the Minister of Japan."

[10] For the texts of this Treaty and the Notes accompanying it, see MacMurray, No. 1915/8. MacMurray gives also the terms of the original Japanese Demands as reported by the Japanese Government as well as those reported by the Chinese Foreign Office.

As regards the restoration to China of the leased area of Kiaochow, the following was also embodied in notes exchanged:

When, after the termination of the present war, the leased territory of Kiaochow Bay is completely left to the free disposal of Japan, the Japanese Government will restore the said leased territory to China under the following conditions:—

1. The whole of Kiaochow Bay to be opened as a Commercial Port.[11]

2. A concession under the exclusive jurisdiction of Japan to be established at a place designated by the Japanese Government.

3. If the foreign Powers desire it, an international concession may be established.

4. As regards the disposal to be made of the buildings and properties of Germany and the conditions and procedure relating thereto, the Japanese Government and the Chinese Government shall arrange the matter by mutual agreement before the restoration.

Effect of China's Declaration of War Against Germany. On March 14, 1917, China severed diplomatic relations with Germany and on August 14 of the same year declared war against Germany and Austria-Hungary, at the same time declaring that all treaties, conventions and agreements between herself and those countries were abrogated.[12]

There has been some controversy as to what was the effect of this declaration of abrogation as determined by general principles of international law and practice, and,

[11] The Lease Agreement of 1898 had covered only the waters of Kiaochow Bay up to the high-water mark, and two points at the mouth of the Bay.

[12] For the terms of the Chinese Declaration of War, see MacMurray, No. 1917/7.

consequently, as to what German rights in China were in existence at the end of the war to which, under the terms of the Sino-Japanese agreements of 1915, Japan might lay claim.[13] As will later appear, the Powers

[13] Accepted international law recognizes that a declaration of war *ipso facto* abrogates not all treaties between the countries concerned but only those that are described as "transitory,"—transitory as in the sense of passing along or continuing in force after, as well as before, a declaration of war. It is universally agreed that when a piece of territory has been transferred from one sovereignty to another by treaty, that cession is not annulled if, later, war is declared between the two countries. For example, as a legal proposition, there could be no claim that the outbreak in 1914 of war between Germany and France operated, *ipso facto*, to annul the provision of the treaty of Frankfort of 1871 which provided for the annexation by Germany of the former French provinces of Alsace and Lorraine. The matter is not so clear, however, with reference to such railway and mining rights as Germany had obtained in Shantung by treaty, nor even as to the area of Kiaochow which was not ceded outright to Germany but merely leased for a term of ninety-nine years and with the express reservation to China of her sovereignty over the territory thus leased. Dr. John C. Ferguson, in his testimony before Committee on Foreign Affairs of the United States Senate, in answer to the question as to the theory under which China could claim that, by her Declaration of War against Germany, 'her agreement to transfer the German rights to Japan, had become inoperative, said: "May I say that in that matter the Chinese Government took the advice of two eminent French international lawyers. If the Committee will excuse me from mentioning names, I will not mention names, but I am stating what is within my own individual knowledge, that she took the advice of two eminent French international lawyers, of the most eminent Russian jurist who was known to the President of the Board of Foreign Affairs, who had formerly been Minister in St. Petersburg; of an eminent Dutch jurist of Holland, and of an eminent international jurist from Belgium, and based her claim on the advice which was given to her by those jurists, that is, that her declaration of war against Germany, notwithstanding her contract which had already been made in 1915 with Japan, of itself vitiated not only the German lease but also the treaty with Japan." Asked if that was the unanimous opinion of the jurists consulted, Dr. Ferguson replied that it was.

For the text of a collective note of the diplomatic representatives of the Allies at Peking to the Chinese Foreign Office setting forth certain advantages which their governments were disposed to accord to China in recognition of her entrance into the war, see MacMurray, note to No. 1917/7.

signatory to the Versailles Treaty of Peace of 1919 appeared to accept the view that the German treaty rights in Shantung were still in existence and, therefore, might be subjects of treaty disposition. If, therefore, China had signed the Versailles Treaty, there would have been no ground upon which she could have continued to claim that these rights had gone out of existence at the time that she declared abrogated all existing treaties and agreements between herself and Germany. As it is, the point is one that may yet be raised by China should she deem it politic to do so.[14]

Agreements of September 24, 1918. The various acts of Japan in Shantung had not failed to arouse considerable opposition upon the part of the people of that province as well as from the authorities at Peking. The Chinese Government was, however, in no military or financial position to enforce its rights and was therefore compelled on September 24, 1918, to make important concessions to Japan in return for certain promises upon its part. This arrangement between the two countries was embodied in a series of notes, dated September 24, 1918, exchanged between the Japanese Minister for Foreign Affairs and the Chinese Minister at Tokyo.[15]

[14] By a presidential mandate, approved by the Peking Parliament, the Chinese Government in September, 1919, declared at an end the war against Germany; but there has been no treaty of peace with Germany fixing the future relations of the two countries.

[15] MacMurray, No. 1918/13. These notes together with the formal loan agreement of September 28, 1918, relating to the Tsinanfu-Shuntehfu and Kaomi-Hsuchow extensions of the Shantung Railway, presently to be mentioned, were not made public until February, 1919, when, at the Paris Conference, the production of any secret engagements that might exist was asked for by the other Powers.

Baron Goto, on behalf of the Japanese Government, wrote:

In view of the friendly relations existing between your country and Japan, and in pursuance of the spirit of harmony and reconciliation, the Imperial Government considers it proper that the various questions in Shantung should be arranged in the following manner, and has decided to bring the matter to the notice of your Government:—

With regard to the Japanese troops stationed along the Kiaochow-Tsinan Railway, all the troops shall be concentrated at Tsingtao except for the stationing of a detachment at Tsinan.

The guarding of the Kiaochow-Tsinan Railway is to be undertaken by your Government by the organization of a police force for the purpose.

The expenditure required for the maintenance of the police force shall be defrayed by the Kiaochow-Tsinan Railway.

Japanese shall be engaged for the headquarters of this police force, at the principal railway stations and at the police training school.

Chinese are to be engaged as employees on the Kiaochow-Tsinan Railway.

When the status of the Kiaochow-Tsinan Railway shall have been established it shall be conjointly worked by Japanese and Chinese.

The Civil Administration now in force shall be abolished.

To this note the Chinese Minister replied with the statement that the Chinese Government gladly agreed to its provisions, but the agreement or arrangement was never ratified by the Parliament at Peking, and the Chinese people, with practical unanimity, have denied its binding force.

Japanese Gain Additional Railway Concessions in Shantung. At this same time also notes were exchanged between the Chinese Minister at Tokyo and the Japanese

Minister for Foreign Affairs by which Japanese interests were promised the right to build, for the account of the Chinese Government, extensions of the Tsingtao-Tsinan Railway from Kaomi to Hsuchowfu and from Tsinanfu to Shuntehfu. These extensions, it is to be observed, were the same as those which had been granted to German interests by an exchange of notes of December 31, 1913.

On September ~~29~~ 24, 1918, a contract[16] was signed between a syndicate of Japanese financial interests and the Chinese Minister at Tokyo according to which the sum of 20,000,000 yen was to be immedately advanced to the Chinese Government for the building of these railway extensions.

Upon this same date was signed also the agreement for the financing of the additional railways in Manchuria which have been earlier mentioned.

War Participation Loan. Also, on the same date, September 28, 1918, was signed by the Chinese Minister at Tokyo and the Japanese Minister for Foreign Affairs the so-called "War Participation" loan contract,[17] which called for the underwriting by Japanese financial interests of 20,000,000 yen Chinese Government treasury certificates. This financial undertaking was declared to be "in accordance with the object of the Sino-Japanese military co-operation agreement"—an agreement that will later be referred to[18]—the purpose being to provide funds for

[16] For translation of this contract and of the exchange of notes on which it was based, see MacMurray, No. 1918/16.

[17] For translation of this loan contract and accompanying documents, see MacMurray, No. 1918/14.

[18] See *post*, p. 422.

the Chinese Government "for organizing a defensive army so as to be able to fulfil its co-operative duties, and also because of the expenses in participating in the war," that is the Great War.[19]

China at the Paris Peace Conference. The facts which have been set forth show the rights in Shantung possessed by Germany or Japan at the time of the convening of the Powers at Paris for determining the conditions of peace to be presented to the Central European Powers.

Upon the face of the documents which have been described or quoted it is seen that Japan had a legal or contractual right to remain in possession of the former German rights in Shantung if the Powers were willing to hold China to her agreements of 1915 notwithstanding the circumstances under which they were exacted of her by Japan. By the treaties of 1915 China had explicitly agreed to this, Japan upon her part making certain conditional promises regarding the return of the leased area of Kiaochow to China. And, as to the Tsingtao-Tsinanfu Railway, which has been the property of a German corporation and therefore might conceivably have been deemed not to be public property to which the Japanese might take title, the notes of September 24, 1918, looked to the transformation of this railway company into a joint Sino-Japanese enterprise. Thus, as a purely technical proposition, all that appeared to be necessary in order to perfect Japan's title to the Shantung rights was that Germany, in the treaty of peace, should give her

[19] In fact the funds were used to support the northern military party in its contest with the southern or self-styled "Constitutional" party with its headquarters at Canton.

assent to the transfer—an assent which she had no power to give under the Lease Convention of 1898, but which could be given under the Sino-Japanese agreements of 1915, provided they were held to be valid.

Against this final disposition of the German rights in Shantung, the Chinese delegates to the Paris Conference advanced two legal propositions: (1) that the German rights had gone out of existence at the time that China declared the abrogation of all treaties between herself and Germany; and (2) that the agreements of 1915 should be held void because of the circumstances under which China's consent to them had been obtained.

It cannot be maintained that these two propositions were of conclusive weight if judged purely from the standpoint of technical public law. The real strength in China's case was upon its ethical side.

Especially China hoped for the support of the American delegation in view of the long established policy of that country in the Far East, as well as of the fact that China had entered the war upon suggestion of the American Government. As to the Entente Powers, whatever hopes China may have had of their favorable action or influence were soon shown to be futile because of certain engagements, which it now transpired, they had entered into early in 1917 with Japan.[20]

Secret Engagements of 1917 of the Entente Powers with Japan. On February 16, 1917, the British Ambassador at Tokyo sent to the Japanese Minister for Foreign Affairs a letter in which, after referring to the fact that the Japanese Government had asked for assurances

[20] MacMurray, notes to 1914/9.

regarding Japan's succession to the German rights in Shantung, he said:

His Britannic Majesty's Government accede with pleasure to request of the Japanese Government for an assurance that they will support Japan's claims in regard to the disposal of Germany's rights in Shantung and possessions in the islands north of the equator on the occasion of the Peace Conference; it being understood that the Japanese Government will in the eventual peace settlement treat in the same spirit Great Britain's claims to the German Islands south of the equator.

On February 19, the Japanese Minister sent to the French and Russian Ambassadors at Tokyo a note in which, after some introductory statements, he said:

The Imperial Japanese Government believes that the moment has come for it also to express its desires relative to certain conditions of peace essential to Japan and to submit them for the consideration of the Government of the French Republic [Empire of Russia].

The French [Russian] Government is thoroughly informed of all the efforts the Japanese Government has made in a general manner to accomplish its task in the present war, and particularly to guarantee for the future the peace of Oriental Asia and the security of the Japanese Empire, for which it is absolutely necessary to take from Germany its bases of political, military and economic activity in the Far East.

Under these conditions the Imperial Japanese Government proposes to demand from Germany at the time of the peace negotiations the surrender of the territorial rights and special interests Germany possessed before the war in Shantung and the islands situated north of the equator in the Pacific Ocean.

The Imperial Government confidently hopes the Government of the French Republic, [Russia] realizing the legitimacy of these demands, will give assurance that, her case being proved, Japan may count upon its full support on this question.

It goes without saying that reparation for damages caused to

the life and property of the Japanese people by the unjustifiable attacks of the enemy, as well as other conditions of peace of a character common to all the Entente powers, are entirely outside the consideration of the present question.[21]

Replying to this communication, the French Ambassador, on March 1, said:

The Government of the French Republic is disposed to give the Japanese Government its accord in regulating at the time of the peace negotiations questions vital to Japan concerning Shantung and the German Islands in the Pacific north of the equator. It also agrees to support the demands of the Imperial Japanese Government for the surrender of the rights Germany possessed before the war in the Chinese province and these islands.

M. Briand demands, on the other hand, that Japan give its support to obtain from China the breaking of the diplomatic relations with Germany, and that it give this act desirable significance.[22]

The consequences of this in China should be the following:

First—Handing passports to the German diplomatic agents and consuls.

Second—The obligation of all under German jurisdiction to leave Chinese territory.

Third—The internment of German ships in Chinese ports and the ultimate requisition of these ships in order to place them at the disposition of the Allies following the example of Italy and Portugal. According to the information of the French Government there are fifteen German ships in Chinese ports totaling about 40,000 tons.

Fourth—Requisition of German commercial houses established

[21] The only text which we have of this note is that published by the Associated Press, and there is internal evidence that the translating is not wholly accurate. The clause "her case being proved" which occurs in the next to the last paragraph of the Japanese note to the Russian and French Governments, is almost surely a mistranslation.

[22] Twice earlier Japan had vetoed the proposition that China should enter the war upon the Allied side. Source ?

in China; forfeiting the right of Germany in the concessions she possesses in certain parts of China.

Russia, on February 20, gave to Japan the assurances she desired; and on March 14 a similar assurance, though in a different manner, was given by Italy to the Japanese Ambassador at Rome.

President Wilson's Position. It is known that President Wilson was very unwilling to concede to Japan her claim to the German rights in China, but that he felt constrained to do so in view of the fact that Great Britain, France, and Italy all held themselves obliged to make good their promises to Japan and that Japan insisted upon their fulfilment and threatened to withdraw from the Conference in case this was not done.[23]

[23] It is also known that the other members of the American Delegation to the Conference—Secretary Lansing, General Bliss, and Mr. White—had advised the President that, in their opinion, Japan's demands should not be yielded to. Later, Secretary Lansing, testifying, on August 6, 1919, before the Committee on Foreign Relations of the United States Senate, said:

"Question. Was the Shantung decision [in the "Council of Three"] made in order to have the Japanese signatures to the league of nations?

"Answer. That I cannot say.

"Question. In your opinion was it?

"Answer. I would not want to say that, because I really have not the facts on which to form an opinion along that line.

"Question. Would the Japanese signatures to the League of Nations have been obtained if you had not made the Shantung agreement?

"Answer. I think so.

"Question. You do?

"Answer. I think so.

"Question. So that even though Shantung had not been delivered to Japan, the League of Nations would not have been injured?

"Answer. I do not think so.

"Question. And you would have had the same signatures that you have now?

"Answer. Yes; one more, China.

The Treaty of Peace: Shantung Provisions. The section of the Treaty of Peace, as finally signed, dealing with the status of Shantung, reads as follows:

ARTICLE 156. Germany renounces in favor of Japan, all her rights, title, and privileges—particularly those concerning the territory of Kiaochow, railways, mines and submarine cables—which she

"Question. One more, China. So that the result of the Shantung decision was simply to lose China's signature rather than to gain Japan's?

"Answer. That is my personal view, but I may be wrong about it.

"Question. Why did you yield on a question on which you thought you ought not to yield and that you thought was a principle?

"Answer. Because naturally we were subject to the direction of the President of the United States.

"Question. And it was solely because you felt that you were subject to the decision of the President of the United States that you yielded?

"Answer. Yes."

In a Conference held at the White House on August 19, 1919, between the President and Members of the Senate Committee, the President's attention was called to the statement by his Secretary of State that in his, the Secretary's, opinion Japan would have signed even though her demands with regard to Shantung had not been satisfied. To this the President replied, "Well, my conclusion is different from his." The following questions and answers ensued:

"Question. You could not have got the signature of Japan if you had not given Shantung to Japan?

"Answer. That is my judgment.

"Question. You say you were notified to that effect?

"Answer. Yes, sir.

"Question. As I understand, you were notified that they [the Japanese Delegates] had instructions not to sign unless this was included.

"Answer. Yes.

. . . . . .

"Question. You would have much preferred to have a different disposition, notwithstanding the promise of Japan in the treaty, would you not?

"Answer. Yes, sir."

At this same Conference, the President when asked when he first learned of the agreements which the Entente Powers had made with Japan in 1917 with regard to German interests in the Far East, replied that they had been disclosed to him for the first time after he reached Paris. Asked if that was the first knowledge of them obtained by the American Government he replied that it was unless there was information in the Department of State of which he knew nothing.

acquired in virtue of the Treaty concluded by her with China on March 6, 1898, and of all other arrangements relative to the Province of Shantung.

All German rights in the Tsingtao-Tsinanfu Railway, including its branch lines, together with its subsidiary property of all kinds, stations, shops, fixed and rolling stock, mines, plant and material for the exploitation of the mines, are and remain acquired by Japan, together with all rights and privileges attaching thereto.

The German submarine cables from Shanghai and from Tsingtao to Chefoo, with all the rights, privileges and properties attaching thereto, are similarly acquired by Japan, free and clear of all charges and encumbrances.

ARTICLE 157. The movable and immovable property owned by the German State in the territory of Kiaochow, as well as all the rights which Germany might claim in consequence of the works or improvements made or of the expenses incurred by her, directly or indirectly, in connection with this territory, are to remain acquired by Japan, free and clear of all charges and encumbrances.

ARTICLE 158. Germany shall hand over to Japan within three months from the coming into force of the present Treaty, the archives, registers, plans, title-deeds and documents of every kind, wherever they may be, relating to the administration, whether civil or military, financial, judicial or other, of the territory of Kiaochow.

Within the same period Germany shall give particulars to Japan of all treaties, arrangements or agreements relating to the rights, title or privileges referred to in the two preceding articles.

The Treaty of Peace: German Rights and Interests in China Other Than Those in Shantung. The following are the provisions of the Paris Treaty of 1919 which relate specifically to German rights and interests in China other than those in Shantung:[24]

ARTICLE 118. In territory outside her European frontiers as fixed by the present Treaty, Germany renounces all rights, titles

[24] See *post*, Chap. XVIII for the provision of the Paris Treaty with reference to opium.

and privileges whatever in or over territory which belonged to her or to her allies, and all rights, titles and privileges whatever their origin which she held as against the Allied and Associated Powers.

Germany hereby undertakes to recognize and to conform to the measures which may be taken now or in the future by the Principal Allied and Associated Powers, in agreement where necessary with third Powers, in order to carry the above stipulation into effect.

ARTICLE 128. Germany renounces in favour of China all benefits and privileges resulting from the provisions of the final Protocol signed at Peking on September 7, 1901, and from all annexes, notes and documents supplementary thereto. She likewise renounces in favour of China any claim to indemnities accruing thereunder subsequent to March 14, 1917.

ARTICLE 129. From the coming into force of the present Treaty the High Contracting Parties shall apply, in so far as concerns them respectively:

(1) The Arrangement of August 29, 1902, regarding the new Chinese customs tariff;

(2) The Arrangement of September 27, 1905, regarding Whang-Poo, and the provisional supplementary Arrangement of April 4, 1912.

China, however, will no longer be bound to grant to Germany the advantages or privileges which she allowed Germany under these Arrangements.

ARTICLE 130. Subject to the provisions of Section VIII of this Part, Germany cedes to China all the buildings, wharves and pontoons, barracks, forts, arms and munitions of war, vessels of all kinds, wireless telegraph installations and other public property belonging to the German Government, which are situated or may be in the German Concessions at Tientsin and Hankow or elsewhere in Chinese territory.

It is understood, however, that premises used as diplomatic or consular residences or offices are not included in the above cession, and, furthermore, that no steps shall be taken by the Chinese Government to dispose of the German public and private property

situated within the so-called Legation Quarter at Peking without the consent of the Diplomatic Representatives of the Powers which, on the coming into force of the present Treaty, remain Parties to the Final Protocol of September 7, 1901.

ARTICLE 131. Germany undertakes to restore to China within twelve months from the coming into force of the present Treaty all the astronomical instruments which her troops in 1900-1901 carried away from China, and to defray all expenses which may be incurred in effecting such restoration, including the expenses of dismounting, packing, transporting, insurance and installation in Peking.

ARTICLE 132. Germany agrees to the abrogation of the leases from the Chinese Government under which the German Concessions at Hankow and Tientsin are now held.

China, restored to the full exercise of her sovereign rights in the above areas, declares her intention of opening them to international residence and trade. She further declares that the abrogation of the leases under which these concessions are now held shall not affect the property rights of nationals of Allied and Associated Powers who are holders of lots in these concessions.

ARTICLE 133. Germany waives all claims against the Chinese Government or against any Allied or Associated Government arising out of the internment of German nationals in China and their repatriation. She equally renounces all claims arising out of the capture and condemnation of German ships in China, or the liquidation, sequestration or control of German properties, rights and interests in that country since August 14, 1917. This provision, however, shall not affect the rights of the parties interested in the proceeds of any such liquidation, which shall be governed by the provisions of Part X (Economic Clauses) of the present Treaty.

ARTICLE 134. Germany renounces in favour of the Government of His Britannic Majesty the German State property in the British Concession at Shameen at Canton. She renounces in favour of the French and Chinese Governments conjointly the property of the German school situated in the French Concession at Shanghai.

ARTICLE 260. Without prejudice to the renunciation of any

rights by Germany on behalf of herself or of her nationals in the other provisions of the present Treaty, the Reparation Commission may within one year from the coming into force of the present Treaty demand that the German Government become possessed of any rights and interests of German nationals in any public utility undertaking or in any concession operating in Russia, China, Turkey, Austria, Hungary and Bulgaria, or in the possessions or dependencies of these States or in any territory formerly belonging to Germany or her allies, to be ceded by Germany or her allies to any Power or to be administered by a Mandatory under the present Treaty, and may require that the German Government transfer, within six months of the date of demand, all such rights and interests and any similar rights and interests the German Government may itself possess to the Reparation Commission.

Germany shall be responsible for indemnifying her nationals so dispossessed, and the Reparation Commission shall credit Germany, on account of sums due for reparation, with such sums in respect of the value of the transferred rights and interests as may be assessed by the Reparation Commission, and the German Government shall, within six months from the coming into force of the present Treaty, communicate to the Reparation Commission all such rights and interests, whether already granted, contingent or not yet exercised, and shall renounce on behalf of itself and its nationals in favour of the Allied and Associated Powers all such rights and interests which have not been so communicated.

China Refuses to Sign the Treaty of Peace with Germany. The Chinese delegates, upon instructions from their Government, refused to sign the Treaty of Peace because of Articles 156, 157, and 158. On May 4, the delegation had sent to the Council of Prime Ministers a formal protest regarding the action that was contemplated by the Council, and on May 6 filed a reservation at the Plenary Session of the Conference, with regard to the future status of the German rights in China. On May 26, the Chinese delegation formally notified the other Powers that China

would sign the treaty subject to this reservation. This, they were informed, they would not be permitted to do. The delegation then asked that the reservation be made an "annex" to the treaty. This permission was also denied. This reservation was to the effect that, by signing the treaty, China should not be precluded from demanding at a suitable moment the reconsideration of the Shantung question.

Earlier in the conference the Chinese had offered to accept an arrangement under which the German rights in Shantung should be ceded to Japan, provided the Council of Four [Great Britain, the United States, France and Italy] was made joint trustee, and the promise given that Shantung and Tsingtao would be returned to China within a year. In this case China would agree to repay to Japan the expenses incurred in capturing Tsingtao from the Germans, and to make that city an international port during the time that other foreign "settlements" might exist in China. This compromise was rejected, Japan having asserted that it would not be acceptable to her.

Japan's Promise to Restore Shantung to China. Although the Treaty of Peace contains no provision to that effect, it has been stated by President Wilson, and acknowledged by the Japanese Foreign Office, that at Paris the Japanese delegation gave an oral undertaking to restore to China all of the German rights in Shantung which she was to receive except those of an economic character, and the right to establish a "concession" at Tsingtao. It would appear, however, that already there is a difference of opinion on the part of President Wilson and of the

Japanese Minister for Foreign Affairs as to precisely what the Japanese had undertaken to return, and under what conditions.

President Wilson at the conference with members of the Committee on Foreign Relations of the Senate, held at the White House on August 19, 1919, when asked as to the promise that Japan had made, said: "I cannot be confident that I can quote it literally, but I know that I can quote it in substance. It was that Japan should return to China in full sovereignty the old Province of Shantung so far as Germany had had any claims upon it, preserving to herself the right to establish a residential district at Tsingtao, which is the town on Kiaochow Bay; that with regard to the railways and mines she should retain only the rights of an economic concession there, with the right, however, to maintain a special body of police on the railway, the personnel of which should be Chinese under Japanese instructors nominated by the managers of the [railway] company and appointed by the Chinese Government. I think that is the whole of it."

Asked if the understanding was oral, the President said that it was " technically oral, but literally written and formulated, and the formulation agreed upon."

Asked further when the return of the Shantung rights to China was to be made, the President replied: " That was left undecided, but we were assured at the time that it would be as soon as possible."[25]

President Wilson Corrects Viscount Uchida's Version of the Agreement. In August, 1919, the Japanese Minister for Foreign Affairs, Viscount Uchida, issued the follow-

[25] *Congressional Record*, August 20, 1919.

ing statement as to the understanding of his Government with regard to the promises that had been made at Paris, and the intentions of his Government in the premises:

It appears that, in spite of the official statement which the Japanese Delegation at Paris issued on May 5 last, and which I fully stated in an interview with the representatives of the press on May 17, Japan's policy respecting the Shantung question is little understood or appreciated abroad.

It will be remembered that in the ultimatum which the Japanese Government addressed to the German Government on August 15, 1914, they demanded of Germany to deliver, on a date not later than September 15, 1914, to the Imperial authorities, without condition of compensation, the entire leased territory of Kiao-Chau with a view to eventual restoration of the same to China. The terms of that demand have never elicited any protest on the part of China or any other allied or associated Powers.

Following the same line of policy, Japan now claims as one of the essential conditions of peace that the leased territory of Kiao-Chau should be surrendered to her without condition or compensation. At the same time abiding faithfully by the pledge which she gave to China in 1915, she is quite willing to restore to China the whole territory in question and to enter upon negotiations with the Government at Peking as to the arrangement necessary to give effect to that pledge as soon as possible after the treaty of Versailles shall have been ratified by Japan.

Nor has she any intention to retain or to claim any rights which affect the territorial sovereignty of China in the province of Shantung. The significance of the clause appearing in Baron Makino's statement of May 5, that the policy of Japan is to hand back the Shantung peninsula in full sovereignty to China, retaining only the economic privileges granted to Germany, must be clear to all.

Upon arrangement being arrived at between Japan and China for the restitution of Kiao-Chau, the Japanese troops at present guarding that territory and the Kiao-Chau-Tsinanfu Railway will be completely withdrawn.

The Kiao-chau-Tsinanfu Railway is intended to be operated as a

joint Sino-Japanese enterprise without any discrimination in treatment against the people of any nation.

The Japanese Government have, moreover, under contemplation proposals for the re-establishment in Tsingtao of a general foreign settlement, instead of the exclusive Japanese settlement which by the agreement of 1915 with China they are entitled to claim.[26]

This statement of the obligations conceived by the Japanese Government to have been imposed upon it by the promises of its representatives at Paris, by no means accorded with President Wilson's understanding of them, and he therefore found it necessary, on August 6, to issue the following public statement:

The Government of the United States has noted with the greatest interest the frank statement made by Viscount Uchida with regard to Japan's future policy respecting Shantung. The statement ought to serve to remove many misunderstandings which had begun to accumulate about this question.

But there are references in the statement to an agreement entered into between Japan and China in 1915 which might be misleading if not commented upon in the light of what occurred in Paris when the clauses of the Treaty affecting Shantung were under discussion. I therefore take the liberty of supplementing Viscount Uchida's statement with the following:

In the conference of the 30th of April last, where this matter was brought to a conclusion among the heads of the principal Allied and Associated powers, the Japanese delegates, Baron Makino and Viscount Chinda, in reply to a question put by myself, declared that:

The policy of Japan is to hand back the Shantung peninsula in full sovereignty to China, retaining only the economic privileges

[26] With regard to this possible abandonment of an exclusive Japanese Settlement at Tsingtao there have been no further developments. Viscount Uchida's statement upon this point aroused much adverse criticism in the Japanese newspapers and from his political opponents in Japan.

granted to Germany, and the right to establish a settlement under the usual conditions at Tsingtao.

The owners of the railway will use special police only to insure security for traffic. They will be used for no other purpose.

The police forces will be composed of Chinese, and such Japanese instructors as the directors of the railway may select will be appointed by the Chinese Government.

No reference was made to this policy being in any way dependent upon the execution of the agreement of 1915 to which Count Uchida appears to have referred. Indeed, I felt it my duty to say that nothing that I agreed to must be construed as an acquiescence on the part of the Government of the United States in the policy of the notes exchanged between China and Japan in 1915 and 1918, and reference was made in the discussion to the enforcement of the agreements of 1915 and 1918 only in case China failed to co-operate fully in carrying out the policy outlined in the statement of Baron Makino and Viscount Chinda.

I have, of course, no doubt that Viscount Uchida had been apprised of all the particulars of the discussion in Paris, and I am not making this statement with the idea of correcting his, but only to throw a fuller light of clarification upon a situation which ought to be relieved of every shadow of obscurity or misapprehension.

CHAPTER XIV

Other Japanese Interests in China

Japanese Sphere in Fukien. There is nothing in the way of formal support, beyond the non-alienation declaration of China in 1898, to support the contention of the Japanese that the Province of Fukien constitutes a Japanese Sphere of Interest.

In the chapter dealing with Extraterritoriality the clearly unjustifiable attempts upon the part of Japan to establish in certain places in Fukien, and especially in Amoy, so-called "police boxes," were discussed. She has also, it may be observed, made the same unauthorized attempts in Manchuria.

Twenty-One Demands of 1915. Though not mentioning the province by name the following demand (Group IV) contained in the Twenty-one Demands of 1915 was understood to relate especially to Fukien.

"The Japanese Government and the Chinese Government with the object of effectively preserving the territorial integrity of China agree to the following special article:

"The Chinese Government engages not to cede or lease to a *third* Power any harbor or bay or island along the coast of China."

This was the demand in its original form. As revised, it read:

"China to give a pronouncement by herself in accordance with the following principle:

"No bay, harbor, or island along the coast of China may be ceded or leased to any Power."[1]

In the exchange of notes [2] which were of even date with the treaties of May 25, 1915, resulting from Japan's ultimatum to China, the Japanese Minister said:

A report has reached me to the effect that the Chinese Government has the intention of permitting foreign nations to establish, on the coast of Fukien Province, dockyards, coaling stations for military use, naval bases, or to set up other military establishments; and also of borrowing foreign capital for the purpose of setting up the above-mentioned establishments. I have the honor to request that Your Excellency [the Chinese Minister of Foreign Affairs] will be good enough to give me a reply stating whether or not the Chinese Government really entertains such an intention.

In reply, the Chinese Minister said:

I beg to inform you that the Chinese Government hereby declares that it has given no permission to foreign nations to construct, on the coast of Fukien Province, dockyards, coaling stations for military use, naval bases, or to set up other military establishments; nor does it entertain an intention of borrowing foreign capital for the purpose of setting up the above-mentioned establishments.

Here there is no engagement on the part of the Chinese Government as to what it will do in the future with reference to dockyards, coaling stations, etc., on the coast of Fukien, but, as a matter of fact, it is known that the Japanese Government would consider it a highly unfriendly act should China at any time give to a foreign Power other than itself a foothold of any kind, of military or political significance in the province or on the coast of Fukien.

[1] It will be observed that the demand relates to any Power, and not, as originally to a *third* Power.

[2] For translation of this exchange of notes, see MacMurray, No. 1915/8.

It is further to be observed that in the famous Fifth Group of the Twenty-one Demands, which group has been "postponed for future discussion," Japan demanded of China (Art. 6) that "if China needs foreign capital to work mines, build railways and construct harbor works (including dockyards) in the Province of Fukien, Japan shall first be consulted."

Mr. MacMurray in his compilation of China treaties points out [3] that it was understood that in the correspondence regarding rights in Fukien the Japanese had in mind a contract that was said to have been concluded between the Chinese Ministry of Marine and the Bethlehem Steel Company, an American corporation, on March 9, 1914, for the establishment of a naval dockyard at Mamoi, near Foochow, a translation of which from a professed Chinese original had been published in the Peking *Daily News*. Mr. MacMurray says: "It is within the knowledge of the editor (who at the time of the publication of this document was Secretary of the American Legation in Peking) that this alleged contract was wholly spurious, and that neither the Bethlehem Steel Company nor any other American firm had entered into any agreement with the Chinese Government contemplating the establishment of such a naval base at Mamoi or elsewhere. It can only be supposed that the Chinese version of the document in question was fabricated out of false rumors and surmises as to the offer made by the Bethlehem Steel Company in October, 1911, and confirmed by its vice-president, Mr. Johnson, when visting Peking in the winter of 1913-14, to open a credit of taels 25,000,000 in favor

[3] In a note to No. 1915/18.

of the Chinese Government if and when desired by the Ministry of Marine for the building of ships and ordnance by the company."

Yangtze Valley Railroads and the Hangyehping Iron Works. It is known that one of the chief reasons why Japan has been especially anxious to obtain influence in China is in order that it may have access to and control of the natural resources of China, and especially of her coal and iron—resources which Japan has in very insufficient quantities within her own borders, and for which, with her developing industrialization, she has a constantly increasing need. In Manchuria she has obtained control of important mines, especially of the Fushun mines, near Mukden, and in Shantung she also has obtained control of most important mining rights at Fangtze and Hungshan and other places.

It had been supposed that England had obtained a position in the Yangtze Valley which would prevent, at the least, the granting of any preferential mining or railway or industrial rights to another power, but in the Twenty-one Demands of 1915 Japan demanded special mining and railway rights in this region.

In Group V of these demands, Japan demanded that China agree " to grant to Japan the right of constructing a railway connecting Wuchang with Kiukiang and Nanchang, another line between Nanchang and Hangchow, and another between Nanchang and Chaochow."

With regard to these demands the Chinese Government has the following to say in its " Official History of the Sino-Japanese Treaties of 1915 ":

The demand for railway concessions in the Yangtze Valley con-

flicted with the Shanghai-Hangchow-Ningpo Railway Agreement of March 6, 1908, the Nanking-Changsha Railway Agreement of March 31, 1914, and the engagement of August 24, 1914, giving preference to British firms for the projected line from Nanchang to Chaochowfu. For this reason the Chinese Government found themselves unable to consider the demand, though the Japanese Minister, while informed of China's engagements with Great Britain, repeatedly pressed for its acceptance.

These demanded railway concessions, together with the other Demands of Group V were not, as is known, pushed to final issue by Japan in 1915, but have been postponed "for future discussion."

With regard, however, to another very important interest in the Yangtze Valley, Japan was insistent and successful. This related to the Hanyehping Iron Works.

This Chinese company is one of the largest iron and coal concerns in China, and is situated near Hankow. The corporation controls the great Tayeh iron mines, and the coal deposits of Pinghsiang which supply with fuel the Chinese arsenal of Hanyang. Through inefficient management the company had not been financially successful, and, before the war, had borrowed considerable sums from Japan.

Demands of 1915. Now, in 1915, in Group III of the Twenty-One Demands, Japan made the following demands:

The Japanese Government and the Chinese Government, seeing that Japanese financiers and the Hanyehping Co., have close relations with each other at present and desiring that the common interests of the two nations shall be advanced, agree to the following articles:—

ARTICLE 1. The two Contracting Parties mutually agree that when the opportune moment arrives the Hanyehping Company

shall be made a joint concern of the two nations and they further agree that without the previous consent of Japan, China shall not by her own act dispose of the rights and property of whatsoever nature of the said Company nor cause the said Company to dispose freely of the same.

ARTICLE 2. The Chinese Government agrees that all mines in the neighborhood of those owned by Hanyehping Company shall not be permitted, without the consent of the said Company, to be worked by other persons outside of the said Company; and further agrees that if it is desired to carry out any undertaking which, it is apprehended, may directly or indirectly affect the interests of the said Company, the consent of the said Company shall first be obtained.

With reference to these demands, the Chinese Government, in the conferences resulting therefrom, agreed "to refrain from raising objections to the principle of co-operation in the Hanyehping Company, if the latter should arrive at an agreement in this respect with the Japanese capitalists concerned. With reference to this question it was pointed out to the Japanese Minister that, in the Provisional Constitution of the Republic of China, Chinese subjects are guaranteed the right to protection of their property and freedom to engage in any lawful occupation. The Government were precluded, therefore, from interfering with the private business of the people, and could not find any other solution than the one thus agreed to."[4]

In their revised form Group III of the Japanese Demands read as follows:

The relations between Japan and the Hanyehping Company being very intimate, if the interested party of the said Company

[4] China's Official History of the Sino-Japanese Treaties.

comes to an agreement with the Japanese capitalists for cooperation, the Chinese Government shall forthwith give its consent thereto. The Chinese Government further agrees that, without the consent of the Japanese capitalists, China will not convert the company into a state enterprise, nor confiscate it, nor cause it to borrow and use foreign capital other than Japanese.

In the exchange of notes [5] accompanying the treaties of May 25, 1915, resulting from Japan's ultimatum to China, the following engagement was made by China:

If in future the Hanyehping Company and the Japanese capitalists agree upon cooperation, the Chinese Government, in view of the intimate relations subsisting between the Japanese capitalists and the said company, will forthwith give its permission. The Chinese Government further agrees not to confiscate the said company, nor without the consent of the Japanese capitalists to convert it into a state enterprise, nor cause it to borrow and use foreign capital other than Japanese.

---

[5] For translation of this exchange of notes, see MacMurray, No. 1915/8.

CHAPTER XV

Japan's Political Ambitions in and towards China

In order to complete our account of Japan's influence and control in China, or at least her officially acknowledged ambitions in this respect, it is necessary to consider the scope of the famous Fifth Group of Demands which she presented to China in 1915—demands which, to be sure, were not then granted by China, but which, however, are still pending "for future discussion."

Group V of the Twenty-One Demands. These demands in their original form were as follows:

Article 1. The Chinese Central Government shall employ influential Japanese advisers in political, financial and military affairs.

Article 2. Japanese hospitals, churches and schools in the interior of China shall be granted the right of owning land.

Article 3. Inasmuch as the Japanese Government and the Chinese Government have had many cases of dispute between Japanese and Chinese police to settle cases which caused no little misunderstanding, it is for this reason necessary that the police department of important places [in China] shall be jointly administered by Japanese and Chinese, or that the police departments of these places shall employ numerous Japanese, so that they may at the same time help to plan for the improvement of the Chinese Police Service.

Article 4. China shall purchase from Japan a fixed amount of munitions of war (say 50% or more) of what is needed by the Chinese Government, or that there shall be established in China a Sino-Japanese jointly worked arsenal. Japanese technical experts are to be employed and Japanese material to be purchased.

ARTICLE 5. China agrees to grant to Japan the right of constructing a railway connecting Wuchang with Kiukiang and Nanchang, another line between Nanchang and Hanchow, and another between Nanchang and Chaochou.

ARTICLE 6. If China needs foreign capital to work mines, build railways and construct harbour-works (including Dockyards) in the Province of Fukien, Japan shall be first consulted.

ARTICLE 7. China agrees that Japanese subjects shall have the right of missionary propaganda in China.

When one considers the scope of these demands it is not surprising that the Japanese Government should have been reluctant to have it known by the other Treaty Powers that they were being pressed. This also explains the official issuance by Japan of what purported to be a list of the Demands which, in addition to other omissions and inaccuracies, failed to make mention of the fact that this Fifth Group of Demands had been presented.[1]

The Japanese Government later explained this omission by alleging that the items in Group V had been presented not as Demands but merely as *Desiderata,* and, in support of this assertion has quoted the following paragraph claimed to be contained in the instructions from the Foreign Office to its Minister at Peking:

As regards the proposals contained in the Fifth Group, they are presented as the wishes of the Imperial Government. The matters which are dealt with under this category are entirely different in character from those which are included in the first four groups. An adjustment, at this time, of these matters, some of which have

[1] On April 3, the Japanese Premier, Count Okuma made the public statement that Japan had not asked for the appointment of Japanese advisers in China, and that "in Shantung Japan is only asking for what China has already granted to Germany."

been pending between the two countries, being nevertheless highly desirable for the advancement of the friendly relations between Japan and China as well as for safeguarding their common interests, you are also requested to exercise your best efforts to have our wishes carried out.

Whatever force this explanation may have is qualified by the fact that when the Twenty-One Demands were made upon China there was no indication given in the text or the accompanying verbal explanations that the demands included in Group V were different in kind or less imperatively presented. In China's "Official History," it is stated:

The first four groups were each introduced by a preamble, but there was no preamble or explanation to the fifth of the five groups. In respect of the character of the demands in this group, however, no difference was indicated in the document between them and those embodied in the preceding groups.

With regard to the statement of the Japanese Government that it had never had the intention of forcing China to accept the Group Five Demands, Mr. Putnam Weale says: "The writer, being acquainted from first to last with everything that took place in Peking from the 18th January to the filing of the Japanese ultimatum of the 7th May, has no hesitation in stigmatizing this statement as false." [2]

With reference to the demand by Japan that Japanese hospitals, schools and temples might own land in the interior of China and that Japanese subjects should have the right to carry on religious propaganda in China, the Chinese Government in its "Official History," said that this

[2] *The Fight for the Republic*, p. 101.

would, in the opinion of the Chinese Government have presented grave obstacles to the consolidation of the friendly feeling subsisting between the two peoples. The religions of the two countries are identical and, therefore, the need for a missionary propaganda to be carried on in China by Japanese does not exist. The natural rivalry between Chinese and Japanese followers of the same faith would tend to increase disputes and friction. Whereas Western missionaries live apart from the Chinese communities among which they labor, Japanese monks would live with the Chinese, and the similarity of their physical characteristics, their religious garb, and their habits of life would render it impossible to distinguish them for purposes of affording the protection which the Japanese Government would require should be extended to them under the system of extraterritorialty now obtaining in China. Moreover a general apprehension exists among the Chinese people that these peculiar conditions favoring conspiracies for political purposes might be taken advantage of by some unscrupulous Chinese.

With regard to the demands of Group V concerning police and the purchase or manufacture of arms, Mr. Hornbeck's comment deserves quotation. He says:

The granting of the first of these would connote an extensive abrogation of sovereign rights, would imply a consciousness on China's part of inability to administer her own affairs, and would inevitably lead to acute and intolerable friction. The granting of the second would involve a more conspicuous disregard of the principle of equal opportunity in China's markets than has ever in a single instance been shown. It would necessitate China's making familiar to Japan every detail of her military preparation and equipment, thus substantially subordinating herself in these vitally important matters to the will and convenience of Japan. The two together would, in the course of a few years, not only put China absolutely at the mercy of Japan but would produce conditions to which Japan could point as ample justification for such measures as she might choose to take for the ostensible purpose of removing those conditions. If China assented to these along with the other

demands she would be assigning herself as a protectorate, immediately, to Japan.[3]

In conclusion of this subject it should be noted that though the other Powers then preoccupied in war did not deem it advisable, at least, so far as the public is advised, to protest Japan's Demands, the United States, on May 16, 1915, felt it necessary to submit to the Chinese and Japanese Governments the following identic note.

In view of the circumstances of the negotiations which have taken place and which are now pending between the Government of China and the Government of Japan and of the agreements which have been reached as a result thereof, the Government of the United States has the honour to notify the Government of the Chinese Republic that it cannot recognize any agreement or undertaking which has been entered into or which may be entered into between the Governments of China and Japan impairing the Treaty Rights of the United States and its citizens in China, the political or territorial integrity of the Republic of China or the international policy relative to China commonly known as the Open Door policy. An identical note has been transmitted to the Japanese Government.

Sino-Japanese Military Agreement of 1918. After China entered the war there was organized a so-called War Participation Board, the ostensible purpose of which was to direct the military operations which China might undertake as a belligerent in the Great War. There can be no question, however, that its chief purpose was to serve as a political agency of the northern military party in the contest then raging between the northern provinces represented by the government at Peking, and certain of the southern and southwest provinces with their headquarters at Canton.

[3] *Contemporary Politics in the Far East*, p. 318.

Early in the year 1918 the "Arms Contract" with Japan had been entered into according to which Japan was to supply China, that is, the northern military party, with a large amount—said to be Yen 40,000,000 worth—of arms and ammunition.

Soon after, it became known that the War Participation Board had entered into an agreement with the Japanese Government, the text of which was kept secret. This news created so much excitement in China and speculation in the foreign chancelleries that, on May 30, the parties concerned deemed it wise to make public the following notes which had been exchanged the preceding March. These notes were as follows:[4]

The Chinese Minister at Tokyo writing to the Japanese Minister for Foreign Affairs, under date of March 25, 1918, said:

I have the honor to communicate to Your Excellency that the Government of China believing that in the present situation cooperation with the Government of Japan on the lines hereinafter indicated is highly important in the interest of both countries, have authorized me to approach your government with a view to arranging for such cooperation.

1. Having regard to the steady penetration of hostile influence into Russian territory, threatening the general peace and security of the Far East, the Government of China and the Government of Japan shall promptly consider in common the measures to be taken in order to meet the exigencies of the situation, and to do their share in the Allied cause for the prosecution of the present war.

2. The methods and conditions of such cooperation between the Chinese and Japanese armed forces in the joint defensive movements against the enemy for giving effect to the decision which may

[4] For translations of these exchanges of notes and of the Military and Naval Agreements, see MacMurray, No. 1918/4.

be arrived at by the two governments in common accord under the preceding clause, shall be arranged by the competent authorities of the two powers who will from time to time consult each other fully and freely upon all questions of mutual interest. It is understood that the matters thus arranged by the competent authorities shall be confirmed by the two governments and shall be put into operation at such time as may be deemed opportune.

In his reply Viscount Motono said that the Japanese Government "fully sharing the views embodied in the foregoing proposals, will be happy to co-operate with the Chinese Government on the lines above indicated."

On the same day, March 25, the Viscount sent also the following note to the Chinese Minister.

With reference to the notes exchanged on March 25, between the governments of Japan and of China on the subject of their joint defensive movements against the enemy, I have the honor to propose on behalf of my Government that the period within which the said notes are to remain in force shall be determined by the competent military and naval authorities of the two Powers. At the same time the Imperial Government are happy to declare that the Japanese troops stationed within Chinese territory for the purpose of such defensive movements against the enemy shall be completely withdrawn from such territory upon the termination of the war.

Besides publishing these notes the Japanese Government issued an official statement, as follows:

Having regard for the steady penetration of hostile influence into Russian territory, jeopardizing the peace and welfare of the Far East, and recognizing the imperative necessity of adequate cooperation between Japan and China to meet the exigencies of the case, the Governments of the two countries, after frank interchange of views, caused the annexed notes to be exchanged, March 25, between the Minister of Foreign Affairs and the Chinese Minister in Tokyo.

In pursuance of the purport of the notes the Imperial Govern-

ment subsequently sent Commissioners representing the Imperial Army and Navy to Peking, where they held conferences with the authorities of the Chinese army and navy. The negotiations progressing smoothly, two agreements were concluded, one relating to the army being signed May 16, and the other relating to the navy, May 19.

These agreements only embody concrete arrangements as to the manner and conditions under which the armies and navies of the two countries are to cooperate in common defence against the enemy, on the basis of the above mentioned notes exchanged on March 25. The details of the arrangements constituting as they do a military secret, cannot be made public but they contain no provisions other than those pertaining to the object already defined. Currency has been given to various rumors, alleging that the agreements contain for instance such stipulations as that a Chinese Expedition is to be under Japanese command, that Japan may construct ports in Chinese territory at such places as she may choose, that Japan will assume the control of Chinese railways, shipyards, and arsenals, and even that Japan will assume the control of China's finances, will organize China's police system, will acquire the right of freely operating Chinese mines producing materials for the use of the arsenals, etc. It cannot be too emphatically stated that these and similar rumors are absolutely unfounded.

(Signed) The Ministry of Foreign Affairs.

The military agreement itself, was signed on May 16, and the naval agreement on May 19. Their texts were not made public until March 14, 1919, when they were published simultaneously in Tokyo and Peking. Briefly summarized, these Agreements provided as follows:

Each country pledged itself to pay due respect to the prestige and interests of the other country, and both parties were to be on an equal footing. When action should become necessary under the agreements, the military and civil officials and peoples of both countries were

to adopt a friendly attitude towards each other within the military areas. Specifically, the Chinese officials were to place no impediments upon the movements of Japanese troops, and the Japanese troops were to respect the sovereignty of China and not to act in a manner contrary to the local customs or to cause inconvenience to the Chinese people within the military areas. The Japanese troops were to be withdrawn as soon as military operations should cease. If it should become necessary to dispatch troops outside Chinese territory, this should be jointly undertaken. In order to facilitate military operations the two countries were to observe the following arrangements: deputies were to be appointed to arrange for coöperation; in order to secure rapid transportation by land or water, both sides were to co-operate; when necessary, military constructions, such as railways, telegraph and telephone lines, would be arranged for, which, however, would be removed at the conclusion of military operations; the two countries were to furnish military supplies and materials to each other to such an extent as not to affect the supplying of ordinary demands; if military experts for direct military operations should be needed for mutual assistance, the one country, upon being requested so to do, should furnish them to the other; important military maps and reports should be exchanged, and the intelligence services of the two countries should render mutual assistance; all secret passwords were to be exchanged. If military transportation should necessitate the use of the Chinese Eastern Railway, the provisions of the original treaty regarding the management and protection of the road were to be respected. Details regarding the agreements were to be

decided upon by delegates appointed by the military authorities of the two countries.

The foregoing is an abstract of the military agreement. The provisions of the naval agreement were, *mutatis mutandis,* similar.

By a supplementary Military Agreement, signed September 6, 1918, and declared to be explanatory of certain important points in the Military Agreement, it was provided, *inter alia,* that the military operations to be conducted in the two Siberian provinces of Trans-Baikalia and Amur should have for their purpose the rendering of aid to the Czecho-Slovac forces and to drive out German and Austrian forces; and that the operations of the Chinese military forces in those provinces should be under the direction of Japanese commanders.

By another agreement of February 5, 1919, it was provided that—"The termination of the state of war against the enemy countries, namely Germany and Austria, shall mean the time when both the Chinese and Japanese Governments shall have approved the Peace Treaty concluded with the enemy countries by the European Peace Conference and when both Chinese and Japanese troops stationed outside Chinese territory shall have been withdrawn simultaneously with the troops of the various Allied countries stationed in the same territories." This provision was declared to relate to Article 9 of the Sino-Japanese Joint Military Defence Pact and to the provision regarding the termination of the state of war embodied in Section 2, Article 11 of that Pact.

In connection with these Sino-Japanese military agreements, may also be mentioned the Arms Agreement said to have been entered into between the two countries dur-

ing January, 1918, according to which China was to purchase a considerable supply of arms and military equipment from Japan, which arms were not to be used for purposes of internal strife. By this agreement Japan was to have preferential rights in supplying arms to China in the future, and Japanese officers were to be engaged as instructors for the training of Chinese troops.[5]

At the time of the present writing (1920) these military agreements of 1918 appear to be still in force. Upon them the Japanese Government relied in some measure to justify her in sending to the Siberian border a much larger number of troops than it had been understood she was to send under the agreement with the United States and Entente Powers for the sending of troops to Eastern Siberia.

---

[5] This agreement was reported in the *Japan Advertiser* of February 23, 1919. See MacMurray, note to No. 1918/4.

CHAPTER XVI

Japan's "Special Interests" in China—The Lansing-Ishii Agreement.

In order to complete the account of Japan's status in China it will be necessary to consider with some degree of particularity her claim to "Special Interests" in that country.

The Lansing-Ishii Agreement. Those who have read the pages which have gone before will remember that the term "Special Interests" as applied to conditions in the Far East had found employment in a number of international documents. Thus, for example, it is employed by both Great Britain and Japan as descriptive of their interests in China in their treaties of Alliance of 1902, 1905, and 1911, and in the Franco-Japanese Arrangement of 1907 it is declared that the two countries have a "special interest to have the order and pacific state of things preserved especially in the regions of the Chinese Empire adjacent to the territories where they have rights of sovereignty, protection, or occupation." There were, therefore, precedents for the recognition which the United States gave, in 1917, to the "special interests" which Japan possessed in China by virtue of her territorial propinquity. This recognition was embodied in identic notes exchanged on November 2, 1917, between Viscount Ishii on special mission from his Government to the United States, and the American Secretary of State, Mr. Lansing. The note signed by Mr. Lansing read as follows:

November 2, 1917.

Excellency:—

I have the honor to communicate herein my understanding of the agreement reached by us in our recent conversations touching the questions of mutual interest to our Governments relating to the Republic of China.

In order to silence mischievous reports that have from time to time been circulated, it is believed by us that a public announcement once more of the desires and intentions shared by our two Governments with regard to China is advisable.

The Governments of the United States and Japan recognize that territorial propinquity creates special relations between countries, and, consequently, the Government of the United States recognizes that Japan has special interests in China, particularly in the part to which her possessions are contiguous.

The territorial sovereignty of China, nevertheless, remains unimpaired and the Government of the United States has every confidence in the repeated assurances of the Imperial Japanese Government that while geographical position gives Japan such special interests they have no desire to discriminate against the trade of other nations or to disregard the commercial rights heretofore granted by China in treaties with other powers.

The Governments of the United States and Japan deny that they have any purpose to infringe in any way the independence or territorial integrity of China and they declare, furthermore, that they always adhere to the principle of the so-called "Open Door" or equal opportunity for commerce and industry in China.

Moreover, they mutually declare that they are opposed to the acquisition by any Government of any special rights or privileges that would affect the independence or territorial integrity of China or that would deny to the subjects or citizens of any country the full enjoyment of equal opportunity in the commerce and industry of China.

I shall be glad to have Your Excellency confirm this understanding of the agreement reached by us.

Accept, Excellency, the renewed assurance of my highest consideration.

ROBERT LANSING.

China's Declaration with Regard to the Lansing-Ishii Agreement. A feature of the Lansing-Ishii Agreement which deserves mention is the fact that, though relating to China, it was negotiated and published without the Chinese Foreign Office being consulted or informed. It was, therefore, not surprising that the Chinese Government should have felt that it had been humiliated, and that it should be apprehensive of the meaning and possible effect of this recognition by America of the special interests within its borders of the one nation which above all others it fears as having designs upon its sovereignty and administrative integrity. Accentuating this feeling was the fact that the agreement was first notified to them on November 4, through the Japanese Legation at Peking.[1] The Chinese Government, therefore, was quite

[1] This was in violation of the understanding with the United States, which was to the effect that the notes should be given publicity on November 7. Even the American Legation at Peking had no notice of the agreement until a copy of it was handed to Minister Reinsch on November 4, by Baron Hayashi, the Japanese Minister at Peking. Mr. Millard is quite justified in the statement that "There is no doubt that this procedure was deliberately calculated to impress the Chinese Government that the United States Government had to some extent conceded Japan's paramountcy in China, and therefore it was Japan's prerogative officially to notify both the Chinese Foreign Office and the American Legation of this important matter."

Mr. Millard also makes the following interesting observation: "A very significant point in connection with the communication of the agreement to the Wai-Chiao-pu (Chinese Foreign Office) by the Japanese Minister at Peking is that both the Japanese and Chinese texts used certain characters (li-i) to translate the 'special interests' of Japan that are recognized by the United States in the instrument. In the translation submitted to the Wai-Chiao-pu later by the American Legation as the official text recognized by the American Government, different characters (Kuan-hsi) were used to describe the 'special interests' that were recognized. The characters mean almost the same thing, yet with a distinction. As translated by the Japanese version 'special interests' indicate vested interests or

within its right when, on November 12, 1917, it issued the following declaration:[2]

The Government of the United States and the Government of China have recently, in order to silence mischievous reports, effected an exchange of notes at Washington concerning their desires and intentions with regard to China. Copies of the said notes have been communicated to the Chinese Government by the Japanese Minister at Peking; and the Chinese Government, in order to avoid misunderstanding, hastens to make the following declaration so as to make known the views of the government.

The principle adopted by the Chinese Government towards the friendly nations has always been one of justice and equality; and consequently the rights enjoyed by the friendly nations derived from the treaties have been consistently respected, and so, even with the special relations between countries created by the fact of territorial contiguity, it is only in so far as they have already been provided for in her existing treaties. Hereafter the Chinese Government will still adhere to the principle hitherto adopted, and hereby it is again declared that the Chinese Government will not allow herself to be bound by any agreement entered into by other nations.

proprietorship, something tangible. In the American version, 'special interests' mean merely a close or strong general interest in the welfare of China, not a particular or vested proprietary or paramount interest. . . . After the American interpretation had been given out, and published in the Chinese press, the Japanese Legation made an effort to induce the American Legation to accept the Japanese translation and amend the American version, but that was declined."

Mr. J. C. Ferguson, in his testimony before the Senate Committee, did not fully agree, upon the foregoing point, with Mr. Millard. He does say however, that the Japanese translation into Chinese of the Lansing-Ishii notes did not agree with the translation into Chinese made by the Chinese or by the Americans. As to the phrase "Special Interests" he made the statement that in the Japanese version it "was translated in such a way that it became a recognition on the part of the United States that Japan has special *influence* in China."

[2] Declaration, not protest. Secretary Lansing when asked the distinction between the two said: "There is a very decided difference. A protest calls for an answer, and a declaration does not."

When asked why the United States had not conferred with the Chinese representatives while discussing and preparing the notes, Secretary Lansing, in his evidence before the Senate Committee, said that this had not been deemed necessary since "It was a mere matter of declaration of a mutual policy between Japan and the United States in regard to their attitude towards China. It did not directly affect any rights of China, except that the two countries agreed that they would keep their hands off."

Comment upon the Agreement. In an explanatory statement which the American Secretary gave to the press at the time of the publication of his agreement with Viscount Ishii, it was declared that there had been growing up between the Japanese and American peoples a suspicion of each other's motives in the Far East;—that to legitimate commercial and industrial enterprises were ascribed political purposes; that this unfortunate feeling had been adroitly stimulated by German propaganda, and that, therefore, it was desirable that there should be a frank statement upon the part of the two governments as to their policies in and towards China. "By openly proclaiming that the policy of Japan is not one of aggression, and by declaring that there is no intention to take advantage commercially or industrially of the special relation to China created by geographical position, the representatives of Japan have cleared the diplomatic atmosphere of the suspicions which had been so carefully spread by our enemies and by misguided or over-zealous people in both countries." The statements in the notes, Mr. Lansing declared, "not only contain a reaffirmation

of the ' Open Door ' principle, but introduce a principle of non-interference with the sovereignty and territorial integrity of China."

Mr. Lansing further declared that while it was not expedient to make public all the communications which had preceded the signing of the agreement, yet it might be said that assurances had been given that the Japanese Government was anxious to do its part in the suppression of Prussian militarism, and that complete and satisfactory understandings had been reached with regard to the matter of naval co-operation in the Pacific.

What especially is to be noted in this contemporaneous explanation which Mr. Lansing thus made was the stress that was laid upon the promise which Japan made to respect the sovereignty and territorial integrity of China and to observe the principle of the Open Door, and the absence of any direct reference to the fact that the United States, upon its part recognized that Japan had " special interests " in China.

Notwithstanding the explanation in the agreement itself and in the accompanying explanation of Secretary Lansing, there has been not a little speculation as to why it should have been deemed necessary or expedient at the time to sign and make public the agreement. Also there had been considerable dispute as to just what meaning the two parties to it intended should be ascribed to the term " Special Interests." This last is a matter of such considerable importance that we shall dwell upon it at some length.

It would seem that there must have been certain considerations moving the parties to it that have not been made public. The affirmation of an intention to respect the

territorial sovereignty of China unimpaired, and to uphold the open door doctrine in China was, of course, nothing more than the reiteration of a promise and an intention that had already been repeatedly declared. Unless, then, we grant that the parties had reason for thinking that these promises were in considerable danger of being broken by Japan or by the United States—a danger which this agreement sought to avoid—the gist of the understanding lies in the formal recognition by the United States that Japan, by reason of her "territorial propinquity" had "special interests" in China, particularly in that part to which her possessions were contiguous. It has already been observed that the term "special interests" was by no means a new one. In no case, however, had the term been defined, nor, so far as the writer is aware, has any attempt been made to give it an officially precise, or even fairly definite, meaning. In the Lansing-Ishii agreement it is not defined except negatively, and by implication, to the extent of holding that it does not connote rights that are in violation of China's territorial sovereignty and integrity or the open door principle.

It has not been suggested from any quarter that the Lansing-Ishii agreement was intended to operate as an abrogation or modification of the Root-Takahira agreement by which the United States and Japan recognized the *status quo* "in the region of the Pacific Ocean." If, then, we boil the matter down until a tangible residuum is reached, the essential fact is that the United States, definitely recognized that Japan had "special interests" in China, "particularly in the part to which her possessions are contiguous," and that the matter of Japan's special interests was left undefined.

This raises the question why the United States should have felt itself called upon at the time to make this recognition—especially in view of the fact that America, above all the other Treaty Powers, had previously been peculiarly insistent upon resisting so far as possible any developments in the Far East tending to infringe the sovereignty and administrative integrity of China or to qualify the Open Door principle. Only a few years previously its government had formally withdrawn its support from its bankers who were members of the Six Power Consortium because the loans it was negotiating appeared to carry with them an interference with China's autonomous administrative action.

In the statement given out by Secretary Lansing at the time of the publication of the Lansing-Ishii agreement it is said that the High Parties to it were moved by a desire to put a stop to a growing suspicion between the people as to the motives inducing the actions of each other in the Far East—a suspicion in part at least fostered and encouraged by German propaganda—and there is also the statement that a satisfactory understanding had been reached as to the naval co-operation of Japan in aid of the Allies in the war. But neither one of these reasons, nor both together, are adequate to explain the making of the agreement. For, in the first place, the terms of the agreement are so indefinite as to lay the basis for, rather than to prevent, future suspicion and discord; and, in the second place, it is known that the promises which Japan was induced to make in the way of supplying merchant ships were founded upon fully proportionate promises of the United States with regard to the supplying of steel to Japan. And, as regards Japan's

naval co-operation, it is to be presumed that this was a matter already covered by understandings between Japan and her western allies. Thus a certain amount of mystery still surrounds the Lansing-Ishii agreement.

Secretary Lansing's Testimony before the Committee on Foreign Relations of the United States Senate. Considerable light upon the meaning of the Lansing-Ishii agreement, and upon certain circumstances attending its framing, has recently been shown by the evidence given by Secretary Lansing, in August, 1918, before the Committee on Foreign Relations of the United States Senate.[3] The testimony is too long to be quoted entirely, but certain of the Secretary's statements may be reproduced or summarized.

When asked what construction should be placed upon the term "special interests," in view of Japan's Twenty-one-Demands, Mr. Lansing replied: "Only the special interest that comes from being contiguous to another country whose peace and prosperity were involved." Asked if these interests differed from those which the United States had in Canada or in Mexico, he replied "No." Asked if it was understood by the State Department that the agreement operated in any way to endorse

[3] Hearings before the Committee on Foreign Relations of the United States Senate, "The Treaty of Peace with Germany," pp. 139-253. Washington, Government Printing Office, 1919.

With regard to all of Secretary Lansing's testimony before the Senate Committee it is to be noted that he was not relying upon his unaided testimony as to what conversations had taken place between him and Viscount Ishii. No stenographer had been present while they were being held but upon each occasion, immediately after the departure of Viscount Ishii, Mr. Lansing dictated to his own private secretary what had been said, and those memoranda he still had.

Japan's Twenty-one Demands, the Secretary replied, "Absolutely not. We were opposed to the Twenty-one Demands." Also it was declared that the agreement could not be held to approve anything which had since developed under the secret agreements of 1917 entered into by Japan with Great Britain, Russia, France and Italy. The Secretary said that Viscount Ishii had given him no intimation that such agreements were in existence, but that, had he known of them, he would not have been deterred from signing the agreement. Regarding this statement the observation may be made that, giving to the agreement the construction which the Secretary has given to it, there would, in fact, appear no reason why, upon the part of the United States, it should not have been signed.

The principal reason, so far as the United States was concerned, said the Secretary, why the agreement was entered into was to get a renewed declaration upon the part of Japan in favor of the open door in China. Mr. Lansing said:

> I suggested to Viscount Ishii that it would be well for the two governments to reaffirm the Open Door policy, on the ground that reports were being spread as to the purpose of Japan to take advantage of the situation created by the war to extend her influence over China—political influence. Ishii replied to me that he would like to consider the matter, but that, of course, he felt that Japan had a special interest in China, and that that should be mentioned in any agreement that we had; and I replied to him that we, of course, recognized that Japan, on account of her geographical position, had a peculiar interest in China, but that it was not political in nature, and that the danger of a statement of special interest was that it might be so construed, and therefore I objected to making such a statement.
>
> At another interview we discussed the phrase "special interests,"

which the Japanese Government had been very insistent upon, and which, with the explanation which I have made, I was not very strongly opposed to, thinking that the affirmation of the open door policy was the most essential thing that we could have at this time; and we discussed the phrase which appeared in the draft note "special interest," and I told him then that if it meant "paramount interest" I could not discuss it further; but if he meant special interest based upon geographical position I would consider the insertion of it in the note. Then it was, during that same interview that we mentioned "paramount interest" and he made a reference to the Monroe Doctrine, and rather a suggestion that there should be a Monroe Doctrine for the Far East. And I told him that there appeared to be a misconception as to the underlying principle of the Monroe Doctrine; that it was not an assertion of primary or paramount interest by the United States in its relation to the other American republics; that its purpose was to prevent foreign Powers from interfering with the separate rights of any nation in this hemisphere, and that the whole aim was to preserve to each Republic the power of self-development. I said further that so far as aiding in this development the United States claimed no special privileges over other countries. . . . I told Viscount Ishii that I felt that the same principle should be applied to China, and that no special privileges and certainly no paramount interest in that country should be claimed by any foreign Power. While the phrasing of the notes to be exchanged was further considered, the meaning of "special interest" was not again discussed.

Upon being asked whether Viscount Ishii had accepted his, Mr. Lansing's, view as to the meaning of the phrase "special interest," Mr. Lansing replied that the Viscount had maintained silence. Questioned later as to whether Viscount Ishii had at any time indicated that it meant paramountcy or interest different from that of any other nation, other than from Japan's propinquity to China, Mr. Lansing replied: "My only recollection is that he wished to have inserted the words 'special inter-

ests and influence,' and I objected seriously to the words ' and influence ' and they were stricken out."

Elsewhere in his testimony Mr. Lansing said that the proposition to insert in the notes the provision regarding "special interests" came from Viscount Ishii:

Senator Borah. You suggested to him that if that meant political control or paramount control, you did not care to discuss it?

Secretary Lansing. Yes.

Senator Borah. What did he say in reply to that, which would indicate that he waived that construction upon your part?

Secretary Lansing. He continued the discussion.

Senator Borah. And continued it along what line?

Secretary Lansing. Well, only along the line that he inserted it in his counter-draft of a note and urged that it be included. But he understood exactly what I interpreted the words "special interest" to mean.

Senator Borah. And you understood what he interpreted them to mean?

Secretary Lansing. No, I did not.

Senator Borah. He said that his idea was that Japan had special interests in China which ought to be recognized, and by those special interests he meant paramount control?

Secretary Lansing. Yes; and I told him I would not consider it.

Senator Borah. Did he say, "Very well, I adopt that construction of it," or anything of that kind?

Secretary Lansing. No, but he continued to introduce the words "special interest," but he knew that if he did not take my meaning I could not continue the discussion.

Senator Brandegee. Has the so-called Lansing-Ishii agreement any binding force on this country?

Secretary Lansing. No.

Senator Brandegee. It is simply a declaration of your policy, or the policy of this Government, as long as the President or the State Department want to continue that policy, I suppose?

Secretary Lansing. Exactly, in the same way that the Root-Takahira agreement is.

In another part of his testimony Mr. Lansing said that the "special interest" which he recognized Japan to have in China related to the whole of China.

Conclusions as to the Scope of Japan's Special Interests in China. It has earlier been pointed out that it has not been easy to harmonize the existence of "spheres of interest," claimed in China by certain of the Treaty Powers, with the general application to that country of the principle of the "Open Door." The matter has become still more difficult by the claim upon the part of Japan to "special interests" in China.

It seems pretty clear that Japan and the other Treaty Powers, and especially the United States, are not in full agreement as to the implications of the term "special interests." At least this is so if we take Japan's interpretation of the phrase as evidenced by her acts and certain of her efforts and not merely as declared in her formal and official announcements. As regards the American position, which may be assumed to be that of the other Treaty Powers with the exception of Japan, it would appear to be as follows:

The fact that Japan is a comparatively near neighbor of China, and with a coterminous border along the northern boundary of Korea, necessarily gives to that country a more particular concern in what happens in or to China than is the case with regard to the other Treaty Powers. This is true not only with reference to matters commercial, financial and industrial, but with regard to matters political. Commercially their trade with the Chinese is a very important matter to the Japanese people. Also it is of prime importance that Japan

should not find herself so placed as not to be able to obtain raw materials from China—iron, coal and food—upon terms fully as favorable as those enjoyed by any other country. Even more than this, it is of almost vital concern to her that China should not pursue a general policy of discouraging foreign export and import trade. Politically, Japan has a particular concern in China for the reason that should certain foreign Powers obtain a dominant or strong control in China, her own national safety might be endangered. In other words, Japan has, beyond question, the same justification for declaring and supporting an Asiatic "Monroe Doctrine" that asserts that the development in China of dominant or strong political control by any foreign Power would be an act unfriendly to herself, that the United States has had in maintaining a similar doctrine with regard to the Western Hemisphere. Also, for the same reason, Japan would have the same concern regarding the development of turbulent conditions in China, leading to lawless and unpunished acts against her nationals or to forays from China across her borders or to her shores, that the United States has had with regard to conditions in Mexico or which she might have if similar conditions should develop in Canada along her northern boundary. But, of course, such an Asiatic Monroe Doctrine carries with it no implication of a right upon her part to claim in China economic preferences or rights of political jurisdiction other than those granted to the other Powers. And it does not need to be said that no claim of national interest would furnish ethical justification to Japan to subordinate Chinese national interests, economic or political, to her own. This Prussian doctrine, the world has agreed to be false and

pernicious. The special advantages which Japan posesses with regard to her dealings with China due to the facts that she is near to that country; that her language is sufficiently similar to make it easier for her people to use the Chinese language than other people can; that, as the Japanese have claimed, they are an Oriental people with a similar civilization and therefore better able to understand and appreciate the interests and feelings of the Chinese than are Westerners—of these circumstantial advantages the Japanese are of course entitled to make all possible use. These proper advantages the American Minister at Peking referred to on November 8, 1917, in his statement to the Chinese Government explaining the Lansing-Ishii agreement. "Japanese commercial and industrial enterprises in China," he said, "manifestly have, on account of the geographical relation of the two countries, a certain advantage over similar enterprises on the part of the citizens or subjects of any other country."[3a]

As has been seen, America has been the chief spokesman in voicing the open door policy and the principle of the maintenance of the continued sovereignty and territorial integrity of the Chinese State, and it is clear that her view regarding the "special interests" of Japan in China is substantially similar to that which has been above outlined. As appears from the quotations which have been made from Secretary of State Lansing's testimony before the Senate committee, America was emphatic in disavowing the idea that Japan's "special interests" had a connotation that would support a claim upon

[3a] See Hornbeck, *Contemporary Politics in the Far East*, pp. 352-359, for an excellent discussion of the claim of Japan to an Asiatic Monroe Doctrine.

Japan's part to exercise a political control in or over China. Even the idea of a special political "influence" was repudiated, and, for this reason Mr. Lansing insisted upon the use of the word "interests" although Viscount Ishii proposed that the word "influence" be employed. And, with especial emphasis, Mr. Lansing refused to acknowledge that Japan had in China any "paramount" interests or influence. And, even as to "interests," it is clear that America, and the same is presumably of the other Powers, has never conceded that Japan has a right to claim rights of commerce, traffic charges, loans, and economic exploitation other than those available to the other Powers. A fortiori, Japan has not been conceded the right to lay exclusive claim to such rights throughout China or within special areas. And, therefore, upon principle, America has refused to agree to the admission of Japan to the present pending plan of a new international consortium for lending financial aid to China, upon condition that new enterprises within South Manchuria and Mongolia should be excluded from the operation of the proposed loans, and that thus these areas should be recognized as areas within which Japan should have preferential and even exclusive rights of economic exploitation.

That the ambitions of Japan, political as well as economic, go far beyond the foregoing definition of her "special interests" in China, she has never, in so many words, formally asserted. But upon a number of occasions, as has appeared in the pages which have gone before, she has endeavored to obtain, and in some cases successfully, privileges not consistent with the foregoing definitions. It would be unduly repetitious to give again

at this point an account of these instances, but reference may at least be made to the following:

In Group V of her Twenty-one Demands Japan asked for special political rights which, if granted, would have made of China a virtual dependency of Japan.

Under the treaties and notes of 1915, based upon the Twenty-one Demands, Japan now lays claim to preferential and even exclusive rights with regard to the building of railways in Manchuria and the making of loans secured by local revenues of the three Manchurian Provinces. And, in the negotiations relating to the pending Consortium, Japan has insisted that Southern Manchuria and Eastern Inner Mongolia be exempted from its operations. The inconsistency of these claims with Great Britain's interpretation of the "open door" principle, as declared to Parliament by Sir Edward Grey, and with America's interpretation of Japan's "special interests" has been referred to. That these claims are inconsistent with the provisions of the Portsmouth Treaty and the self-denying portions of the Lansing-Ishii agreement is also clear.

According to the testimony of the American Secretary of State, Viscount Ishii several times urged that Japan be recognized to have a paramount interest of special "influence" rather than mere special "interests" in China.

Both in Manchuria and Shantung the Japanese have shown disregard of the political jurisdictional rights of the Chinese Government.

Letters of the Russian Ambassador at Tokyo. The obvious divergence between the position of America, and presumably of the other Treaty Powers, and the acts and

expressed wishes if not the avowed interpretation by Japan of her " special interests " in China, gives special interest to certain statements contained in diplomatic correspondence in 1917 of the Russian Ambassador at Tokyo to his own government, which has recently been published by the Bolsheviki. Writing on October 22, 1917, the Ambassador said:

If the United States thinks . . . that the recognition of Japan's special position in China is of no practical consequence, such a view will inevitably lead in the future to serious misunderstandings between us and Japan. The Japanese are manifesting more and more clearly a tendency to interpret the special position of Japan in China, *inter alia,* in the sense that other Powers must not undertake in China any political steps without previously exchanging views with Japan on the subject—a condition that would to some extent establish a Japanese control over the Foreign Affairs of China. On the other hand, the Japanese Government does not attach great importance to its recognition of the principle of the open door and the integrity of China, regarding it as merely a repetition of the assurances repeatedly given by it earlier to other Powers and implying no new restrictions for the Japanese policy in China. It is therefore quite possible that in some future time there may arise in this connection misunderstandings between the United States and Japan. The [Japanese] Minister for Foreign Affairs again confirmed today in conversation with me that in negotiations by Viscount Ishii the question at issue is not some special concession in these or other parts of China, but Japan's special position in China as a whole.

Again, on November 1, 1917, in a confidential letter to the Russian Foreign Office, the Russian Ambassador at Tokyo wrote:

Viscount Motono [the Japanese Minister for Foreign Affairs] mentioned that . . . one of the objects [of the Lansing-Ishii Notes] was to put an end to the German intrigue intended to sow

discord between Japan and the United States, and to prove thereby to the Chinese that there was between the two powers a complete agreement of view with regard to China, who, therefore, must not reckon on the possibility of extracting any profit from playing off one against the other.

To my question whether he did not fear that in the future misunderstandings might arise from the different interpretations by Japan and the United States of the meaning of the terms: "special position" and "special interests" of Japan in China, Viscount Motono replied by saying that—[a gap in the original]. Nevertheless, I gained the impression from the words of the Minister that he is conscious of the possibility of misunderstandings also in the future, but is of opinion that in such a case Japan would have better means at her disposal for carrying into effect her interpretation than the United States.

American Note of June, 1917, to China, and Japan's Attitude with Regard to It. An episode which throws some light upon the character of the special position which the Japanese Government believes itself to possess in and towards China is the irritation which was expressed in June, 1917, at the time that the American Government addressed to the Chinese Government a note in which it declared its concern at the continuance of dissension in China, and expressed its desire that tranquility and political co-ordination might be forthwith re-established. The note continued:

The entry of China into war with Germany [4] or the continuance of her relations with that Government are matters of secondary consideration. The principal necessity for China is to resume and continue her political entity, to proceed along the road of national

[4] China had, at the invitation of the American Government, severed diplomatic relations with Germany on March 14, 1917, but had not then declared war. This declaration of war was not issued until August 14, 1917.

development on which she has made such marked progress. With the form of government in China or the personnel which administers that Government the United States has an interest only in so far as its friendship impels it to be of service to China. But in the maintenance by China of one central united and alone responsible Government, the United States is deeply interested, and now expresses the very sincere hope that China, in her own interest, and in that of the world, will immediately set aside her factional political disputes, and that all parties and persons will work for the re-establishment of a coordinate Government and the assumption of that place among the Powers of the world to which China is so justly entitled but the full attainment of which is impossible in the midst of internal discord.

The sending of this note by the American Government gave great umbrage in Japan. The newspapers were specially emphatic in declaring that not only had it been an unwarranted interference by the American Government with domestic affairs in China, but that Japan had been affronted by not having been officially consulted by the American Government before taking this step.

One ground upon which the Japanese Government founded its criticism of the action of the United States in submitting this note to the Chinese Government was that a short time before this the United States had suggested to Great Britain and Japan that the three countries make a joint representation to China that she should take steps to adjust her domestic difficulties. The Japanese Minister for Foreign Affairs therefore expressed to the American Ambassador at Tokyo his surprise that America, without waiting for Japan's reply to this proposition and without consulting with her, should have made independent representations to China. To this the American Government replied that its action had not been intended to anticipate or to prevent co-operation on the part of Japan.

The irritation aroused in Japan by the note of June, 1917, it may be observed, did not deter the President of the United States in October of the next year, upon the occasion of the anniversary of the Republic, from sending to the President of China a telegram in which it was suggested that "This is an auspicious moment . . . for the leaders in China to lay aside their differences and, guided by a spirit of patriotism and self-sacrifice, to unite in a determination to bring about harmonious co-operation among all elements of your great nation."

Twice during the Great War, Japan vetoed the proposition of her allies that China should come into the war upon their side. However, the circumstances under which the Entente Powers acquiesced in this make it impossible to hold that they then conceded the right of Japan to be consulted or to have a determining voice with regard to the political policies which the other Powers might desire to pursue with regard to China.[5]

[5] Mr. Millard in his most recent book, *Democracy and the Eastern Question*, p. 99, makes the statement founded, he says, upon information which came from a "perfectly reliable source," that when the Ambassadors of Great Britain, France and Russia, in 1915, submitted to Viscount Ishii, the Minister for Foreign Affairs at Tokyo, the proposition that President Yuan Shih-kai had made that China come into the war upon the side of the Allies, "Viscount Ishii" (to quote the words of Millard) "demurred both to the proposal and to the arguments that were advanced. He said that Japan considered developments with regard to China as of paramount interest to her, and she must keep a firm hand there. Japan could not regard with equanimity the organization of an efficient Chinese army such as would be required for her active participation in the war, nor could Japan fail to regard with uneasiness a liberation of the economic activities of a nation of four hundred millions people."

Other authorities have quoted Viscount Ishii's words upon this occasion somewhat differently, but to substantially the same effect.

Viscount Ishii, however, on April 24, 1919, issued at Washington a statement in which he expressly denied that he had ever used the language thus attributed to him. In the course of this statement he said:

This episode has been spoken of because in some quarters the statement has been made that at the time Japan had claimed such a political influence in, and even over, China, as to make it improper that other nations should communicate directly with that country upon political matters without first inquiring of Japan whether the action proposed would be deemed prejudicial to her, Japan's, interests.

"Was I apprehensive of the moral awakening of the 400,000,000 Chinese? The idea is fantastic. It is to effect this very awakening of the Chinese that Japan has been putting forth all efforts for these many years; sending professors to China and welcoming Chinese students to Japan. So long as China remains in a state of lethargy, she is in danger of her existence. And that danger is at the same time Japan's danger. Japan's security lies in the awakening and rising to power of China." He then goes on to say that inducing China to enter the war in 1915 was, however, quite another matter: that the country was then in a critical political condition. President Yuan had started his monarchical movement, armed resistance to this had already sprung up in Yunnan and was increasing each day, and the military value to the Entente of China's participation would have been almost nil. "The mere fact of a declaration of war by China would have immensely added to the excitement of the people, and rendered confusion worse confounded throughout the whole country. The greatest sufferer from such a condition in China would be, next after China herself, her neighbor, Japan. . . . I know that my successor at the Foreign Office, Tokyo, took two years later a different view on this question. He had probably his own reason in the presence of the changed situation."

CHAPTER XVII

Mongolia and Tibet

Mongolia. Since 1911 Mongolia has played a somewhat important part in the international policies of China and it is therefore necessary to devote a section to it. The story of these recent years has been one of an attempt upon the part of China to retain her sovereignty, or at least suzerainty, over this immense reach of country as against the efforts of Russia to draw the outer or western portion under her own influence and political control, and of Japan to do the same with reference to Eastern Inner Mongolia.

"Mongolia, as a geographical term, denotes all that great stretch of territory lying between the organized provinces of China on the south and Siberia on the north. It covers an area of nearly 1,400,000 square miles, but has a population of no more than 2,000,000. Outer Mongolia . . . has a population of about 500,000 Mongols, 200,000 Chinese and some 5,000 Russians. The central portion of Mongolia is a lofty plateau about 4,000 feet above the sea level and largely desert. Southern or Inner Mongolia has a fertile soil and Outer Mongolia to the north of the plateau shows great stretches of green pasture lands.

"The Mongols are mostly nomads. There are very few towns in the country and the agricultural districts are settled for the most part by Chinese colonists, who are encroaching upon the pastures of the Mongols, to the

great annoyance of the latter, at an average rate estimated as a mile a year along a frontier of 1,500 miles.

"Mongolia is divided into two great divisions, Inner Mongolia, the region lying nearest to China and comprising territories inhabited by the tribes which first acknowledged the overlordship of the Manchus, and Outer Mongolia, embracing the remainder of the country. The Inner Mongols still retain the organization into six leagues adopted by the successors of Genghis Khan when all Asia lay beneath their sway."[1]

Russo-Mongolian Treaty of 1912. In July, 1911, due to irritation arising from the attempt of China to pursue a systematic scheme of colonization and to introduce stricter military and administrative control, a gathering of Mongol Princes declared the independence of Outer Mongolia and sent a mission to St. Petersburg to obtain the aid and protection of the Czar. This fell in with the wishes of the Russian Government, which offered to mediate between China and Outer Mongolia, which offer the Chinese Government declined.[2] On November 3, 1912, however, Russia entered into an agreement with Mongolia according to which it was provided that:[3]

ARTICLE 1. The Imperial Russian Government shall assist Mongolia to maintain the autonomous regime which she has established, as also the right to have her national army, and to admit neither

[1] E. T. Williams in the *American Journal of International Law*, October 1916 (Vol. x, p. 798), in an article entitled "The Relations between China, Russia and Mongolia."

[2] In the meantime China was being urged by Russia to consent to a renewal with some changes of the St. Petersburg Treaty of 1881 which defined the authority of China in Ili and regulated certain matters of frontier trade. See *China Year Book*, 1913, p. 567.

[3] MacMurray, No. 1912/12.

the presence of Chinese troops on her territory nor the colonization of her land by the Chinese.

ARTICLE 2. The Ruler of Mongolia and the Mongolian Government shall grant, as in the past, to Russian subjects and trade the enjoyment in their possessions of the rights and privileges enumerated in the protocol annexed hereto. It is well understood that there shall not be granted to other foreign subjects in Mongolia rights not enjoyed there by Russian subjects.

ARTICLE 3. If the Mongolian Government finds it necessary to conclude a separate treaty with China or another foreign Power, the new treaty shall in no case either infringe the clauses of the present agreement and of the protocol annexed thereto, or modify them without the consent of the Imperial Russian Government.[4]

[4] The *China Year Book*, 1914, p. 620, gives the following reasons for Russia's interest in an independent, or at least autonomous, Outer Mongolia: "The motives underlying Russian action are a desire to preserve a buffer between her, as yet, thinly-peopled empire in Asia and the areas inhabited by the ever-spreading Chinese. This desire is the result of a real fear of the Chinese from the economic point of view, and of the knowledge, based on experience, that the Chinese can easily out-trade the Russian, and in an area inhabited in common would eventually have the Russian working for him.

"Secondly, Russia had no desire to see a Chinese modern military force trained and quartered in Outer Mongolia. However inferior to her own troops, and however small this force might be, it would nevertheless constitute a menace against her long line of communication with the Far East, or in the event of another war on the Pacific coast, Russia would have had to set aside a suitable force to match these Chinese troops in case they attempted a sudden inroad toward the Siberian Railway.

"Thirdly, Russia, looking far ahead, wished to maintain free of any strong alien element all that part of Mongolia which lies north of the natural frontier which ought to bound her Siberian possessions on the south, the direction of which is generally roughly described as running from near Vladivostok along the vague line of the Gobi to near Chuguchak. This does not mean that there has ever been any serious question of annexing Outer Mongolia or of colonizing it. . . . But Russia would like it kept free from development by anyone else, or at any rate by the Chinese, so that it shall remain a potential field for the employment of such commercial and industrial energy which is or may become superfluous in Siberia. Finally, when Siberia is fully developed, then it will be time to consider the political status of Outer Mongolia."

Russo-Chinese Understanding of 1913. On November 5, 1913, Russia and China came to an understanding, which was embodied in a declaration and exchange of notes, according to which Russia recognized that Outer Mongolia was under the suzerainty of China, and China recognized the administrative automony of Outer Mongolia. In conformity with this automony, China engaged not to intervene in internal matters touching upon matters of commerce or industry, that she would not maintain troops, or maintain civil or military functionaries in the country or attempt its colonization. Furthermore, China declared herself ready to accept the good offices of Russia for the establishment of relations with Outer Mongolia conforming to the principles and stipulations of the Russo-Mongolian Protocol of October 21, 1912. In the note, it was recognized that the territory of Outer Mongolia was a part of the territory of China; that in matters concerning the political and territorial order the Government of China would come to agreement with Russia by negotiations in which the authorities of Outer Mongolia should take part. The note defined in a very general manner the extent of Outer Mongolia.[5]

On September 30, 1914, Russia entered into another treaty with Outer Mongolia by which she still further increased her influence in that country by obtaining the right to give advice regarding what railways it should build and the procedure to be followed with reference to them. Furthermore, Mongolia pledged herself to consult with Russia before making concessions for railway construction to other nations.[6]

[5] For texts of these notes and declaration, see MacMurray, No. 1913/11.
[6] MacMurray, No. 1914/12.

Tripartite Agreement of 1915. Thus far the agreements had been between either Russia and Mongolia or between Russia and China. On June 7, 1915, however, a tripartite agreement between China, Russia, and Outer Mongolia, was signed, which embodied the following provisions:

Outer Mongolia recognized the Sino-Russian declaration and notes of 1913, and the suzerainty of China.

By Article 3 it was declared that "autonomous Mongolia has no right to conclude international treaties with foreign powers respecting political and territorial questions." Thus, although China remained nominally suzerain, Outer Mongolia was, in fact, placed under the joint protection of China and Russia.

By Article 5 China and Russia, conformably to the Sino-Russian declaration of 1903, recognized "the exclusive right of the autonomous government of Outer Mongolia to attend to all the affairs of its internal administration and to conclude with foreign powers international treaties and agreements respecting questions of commercial and industrial nature concerning autonomous Mongolia."

By Article 6, China and Russia engaged "not to interfere in the system of autonomous internal administration existing in Outer Mongolia."

Other articles of the agreement related to boundaries, titles, customs, administration of justice, telegraphs and posts, etc. These provisions are, however, too detailed to be reproduced here.[7]

Outer Mongolia Cancels Its Antonomy. In November, 1919, the officials, lamas, and Princes of Outer Mongolia

[7] MacMurray, No. 1915/10.

issued a petition to the Chinese Government in which they declared that they surrendered the autonomy of their country and desired again to be admitted as an integral portion of the Republic of China. This action, it was declared, they took in view of the fact that the Russians at the time had no united government, and that pressure was being exerted by irresponsible gangs of bandits and others to compel Mongolia to rob China of all her reserved control of the country in order that a Pan-Mongolian Empire might be established. The petition, after reciting these facts, continued:

On account of our refusal to comply with their wishes these Russians and their bandit comrades now threaten to send troops to our territory. . . . The economic condition of the people of Outer Mongolia is indeed miserable. We desire to save them from their misery, but we have no funds to introduce various reforms. Our troops are not well trained, and they have not been properly armed and clad. Although the Central Government has promised to relieve our financial difficulties and afford us efficient protection, nothing has yet been achieved. Measures have not yet been adopted to promote commerce and industry. . . . The situation is certainly critical. In the hope of effecting the salvation of our territory, we, officials of Outer Mongolia, recently called several conferences of princes and lamas to discuss the means of saving the situation. A resolution has now been unanimously passed to the following effect. "Whereas the friendly feelings between China and Outer Mongolia have been gradually restored and the old-time prejudices have disappeared, and whereas both sides are anxious to promote the welfare of the people and to secure for them permanent peace and tranquility, we, officials, princes and lamas, hereby declare the abolition of the autonomy of Outer Mongolia, and the restoration of the relations subsisting under the late Ching Dynasty. All Djazaks shall hereafter be subject to the control of the Central Government which shall define uniformly all their rights and shall reform our internal organization and resist external invasions for

us." The above has been submitted to and approved by the Living Buddha. . . . In connection with foreign relations we beg further to state that it was on account of the declaration of autonomy that in former days the Sino-Russo-Mongolian Treaty and the Russo-Mongolian Commercial Treaty were concluded and notes between China and Russia were exchanged. Since we are willing to renounce Autonomy, all these instruments become null and void automatically. As to the commercial enterprises started by Russians in Outer Mongolia, the Central Government must undertake the responsibility of making arrangements with the Russians when their new Government is established, so as to promote friendship between China and Russia and to protect our interests, etc.

After reciting the petition, portions of which have been quoted, the President of China, in a mandate, declared:

The above Petition is most sincerely expressed and displays the patriotism of the Living Buddha, princes, and lamas, who have as their ideal a Republic of Five Races, of the same origin. Their Petition is hereby granted, and the desires of the people of Outer Mongolia are hereby complied with. The dignity of the Living Buddha shall hereafter be preserved and the rights and privileges of the Chiefs of the four Leagues respected. The old system obtaining under the late Manchu dynasty is hereby restored, and specially favorable treatment shall be given to Outer Mongolia. I, President, hope that peace and good relations will forever be maintained between the Central Government and Outer Mongolia.[8]

Eastern Inner Mongolia. The attempts of Russia to gain a paramount influence in Outer Mongolia have been duplicated by the efforts of Japan to bring Eastern Inner Mongolia within that same sphere of special interests and control which includes South Manchuria. This was made very evident in the Twenty-one Demands of 1915, and those based upon the Chengchiatun incident in 1916.

[8] The foregoing excerpts are taken from *Millard's Review*, December 6, 1919.

It will be remembered that in Group II of the Twenty-one Demands Japan, in the original draft, required that her subjects should be free to reside and travel in South Manchuria and Eastern Inner Mongolia and to engage in business and in manufacture of any kind whatsoever, and, for such purposes to lease or own land in both of these territories. Furthermore, Japanese subjects were to have the right to open mines in Eastern Mongolia as well as in South Manchuria; if political, financial or military advisers were appointed, Japan was first to be consulted; and her consent was to be obtained before permission could be given by China for the building of a railway or the making of a loan for the building of a railway in either of these areas.

In their revised form all of these demands were abandoned so far as Eastern Inner Mongolia was concerned, but there appeared the following four new demands especially relating to Eastern Inner Mongolia, which were to be embodied in an exchange of notes.

1. The Chinese Government agrees that hereafter when a foreign loan is to be made on the security of the taxes of Eastern Inner Mongolia, China must negotiate with the Japanese Government first.

2. The Chinese Government agrees that China will herself provide funds for building the railways in Eastern Inner Mongolia; if foreign capital is required, she must negotiate with the Japanese Government first.

3. The Chinese Government agrees, in the interest of trade and for the residence of foreigners, to open by China herself, as soon as possible, certain suitable places in Eastern Inner Mongolia as commercial ports. The places which ought to be opened are to be chosen, and the regulations are to be drafted, by the Chinese Government, but the Japanese Minister must be consulted before making a decision.

4. In the event of Japanese and Chinese desiring jointly to undertake agricultural enterprises and industries incidental thereto, the Chinese Government shall give its permission.

By consulting the Notes that are quoted in the chapter dealing with South Manchuria it will be seen that China was constrained to grant to Japan all of these demands.

Tibet. The political status of Tibet as a dependency of China has given rise to considerable controversy during recent years between China and Great Britain as well as between China and Tibet itself. The following facts regarding this country and the treaties and diplomacy relating to it are taken, in the main, from the *China Year Book* for 1919, and the *Statesman's Year Book* for 1916.

Tibet came under the suzerainty of China in the seventeenth century; this Chinese control was strengthened during the eighteenth century; but declined during the later years of the Manchu dynasty.

In 1888, growing out of Tibetan aggressions across the Indian border, the British Government of India intervened and secured from China the signing of the Tibet-Sikkim Convention,[9] according to which the boundary between Sikkim and Tibet was defined in general terms; the protectorate of the British Government over the Sikkim State recognized, carrying with it the "direct and exclusive control over the internal administration and foreign relations of that State"; the obligation of the two signatory States to prevent acts of aggression from their respective sides of the frontier admitted; and the undertaking entered into that the question of trade across that frontier should be thereafter discussed.

[9] *Hertslet*, I, p. 92.

In 1893 such trade regulations were agreed upon, and China undertook to enforce them. This, however, she failed to do, and, as a result, Great Britain sent the Younghusband military expedition to Lhasa, the capital of Tibet, which led to the establishment of direct relations between Tibet and the Indian Government, and the signing of the Convention of 1894 between Great Britain and Tibet, the rights of China as the suzerain State being ignored.

Out of these acts arose a considerable exchange of diplomatic correspondence and negotiations which finally resulted in the Anglo-Chinese Convention of 1906 and the Trade Regulations of 1908.[10]

Relations between Tibet and China having become strained, China, in 1908 and 1909, sent military expeditions into Tibet which finally reached Lhasa. The Dalai Lama fled to India and Chinese control over Tibet was greatly strengthened. However, with the outbreak of the Revolution of 1911 in China, the Chinese garrison in Tibet mutinied, the Tibetans seized arms, the Dalai Lama returned from India, and, as a result, the treaty of peace of 1912 was signed by which it was agreed that all Chinese troops, except an ordinary escort of the Amban (the Chinese representative) should be withdrawn from Tibet.

China, however, was not disposed to leave matters in

[10] For texts of the conventions of 1894 and 1906, see MacMurray, No. 1906/2. In 1907 (September 23) Great Britain and Russia signed a Convention in which the two Governments agreed mutually to respect the territorial integrity of Tibet and to abstain from all interference with its interior administration; and, conformably to the admitted suzerainty of China over Tibet, to deal with Tibet (except as to certain commercial matters fixed by the Conventions of 1904 and 1906) only through China as intermediary.

this situation, and prepared again to undertake military operations against Tibet, when Great Britain intervened, and asked that China refrain from this purpose, it being alleged that such action would be a violation of the Anglo-Chinese Treaty of 1906. In other words China's suzerainty over Tibet was recognized, but Great Britain would not allow this to be developed into sovereignty.

Finally, in 1914 (July 3), a tripartite agreement between the representatives of Tibet, India, and China was reached and initialed by them, which provided that Tibet should be divided, for administration purposes, into Outer and Inner Tibet, the latter being the territory lying nearest to China. Tibet was declared to form a part of Chinese territory and to be under Chinese suzerainty, but the autonomy of Outer Tibet was to be recognized and respected by China and both Great Britain and China were to abstain from all interference in its administration. Furthermore, China was to undertake not to convert Tibet into a Chinese province, and Outer Tibet was not to be represented in any future Chinese Parliament; nor was China to send troops thither or station civil or military officers there, or establish there Chinese colonies. At Lhasa the Chinese were to be permitted to maintain a high official with an escort not exceeding three hundred men. A British agent was to have the right to visit Lhasa with his escort when occasion might require. The Tibetan trade regulations of 1893 and 1908 were to be cancelled, as well as Article 3 of the Convention of April 27, 1906. Any future controversies that might arise between China and Tibet with regard to the convention were to be referred to the British Government for adjustment.

The Chinese Government, however, repudiated the action of its representatives in agreeing to this convention, upon the ground that the area of Chiamdo had been included in Outer Tibet, and Litang and Batang included in Inner Tibet—the two last named areas being alleged to belong to the Province of Szechuan. Upon being notified of this repudiation, Great Britain informed China that, until she signed, she would be refused all advantages and privileges which the convention gave her.

At the time of this writing (1920) British-Tibetan-Chinese relations still remain in this unsatisfactory condition.

Chinese Turkestan (Sinkiang). This Chinese depenency, under the Empire, was placed under the general jurisdictional oversight of the Viceroy of Kansu and Shensi. Since the establishment of the Republic no real administrative control over this region has been exercised by the Government at Peking. There is, in fact, little organized government in Sinkiang, such local political authority as exists being in the hands of the native tribal chieftains (termed Begs). The population is a mixture of Chinese, Turks, Mongols, and Hindus.

CHAPTER XVIII

Opium

Development of the Opium Question. Questions relating to the right of foreigners to import opium into the country have played so important a part in the foreign relations of China that a separate treatment of the subject is demanded.

Although the peculiar properties of opium and the fact that it could be obtained from the poppy plant were well known to the Chinese for many years before, there is no good evidence that it was used except for medicinal purposes before the beginning of the Manchu rule (1644 A. D.). Early in the eighteenth century, however, the smoking of the drug had become a widespread vice, for in 1729 we find an edict of the Emperor forbidding the sale of opium and the maintenance of places where it might be smoked.

From this time on the attitude of the Chinese Government towards the use of opium by its own subjects for other than medicinal purposes was one of continuous official hostility, but in fact its use for smoking rapidly spread and the cultivation of the poppy within China increased, as did the importations of the drug from India which, by 1790, amounted to over four thousand chests annually. After 1799 this trade in Indian opium was controlled by the British East India Company which had taken over the opium monopoly which had previously been in Mogul hands.

From the year 1799 until the so-called Opium War of 1840, terminated by the Nanking Treaty of 1842, there was constant friction between the Chinese authorities and the British traders with regard to the importation of Indian opium into China. The Government at Peking never ceased to declare the trade contraband, but the local officials at Canton and other southern ports connived at it, and so successfully, that the annual importations by 1839 had increased to eighteen thousand chests. At this time, to use Morse's description, "the trade though not legalized was fully regulated, and it is a misuse of terms to apply the word 'smuggling' to what went on then; the foreign merchant imported his opium without concealment, but, during the twenty years of the period, instead of bringing it to his factory at Canton and storing it there or at Macao, he deposited it on store-ships at Lintin; he sold it, generally speaking, and obtained payment at Canton, all subsequent proceedings being the concern of the purchasers, Chinese subjects; and he delivered it on board his own ships, usually at Lintin, to a certain extent at definite points, on the coast to the east and north, but always under official oversight."[1]

In 1839 the Emperor sent to Canton a "Special High Commissioner," one Lin Tse-su, to put a stop, if possible, to this contraband trade. His high-handed acts, including the seizure and destruction of very large stocks of opium (over twenty thousand chests) belonging to foreign traders—mostly British and American—and the imprisonment for a time of the entire body of foreign residents in Canton within their factories and thus hold-

[1] *Trade and Administration of China*, p. 345.

ing them as " hostages " until his orders were complied with, led to the so-called Opium War.

Though Lin's actions were the proximate cause of this Sino-British conflict, it is far from correct to speak of that war as waged solely for the purpose of maintaining the rights or interests of the opium traders. For, as has been stated in one of the early chapters of the present volume, the general relations between foreigners and the Chinese authorities had for years been in a most unsatisfactory condition—the foreigners refusing to admit their amenability to local laws and local authorities, the Chinese asserting their territorial jurisdiction, but refusing to enter into formal diplomatic relations with western nations as with equals, and failing to fulfil other obligations which were recognized by accepted international law and practice as resting upon all independent States. Thus, aside from opium, there were intolerable elements in the situation which had to be corrected.

It seems pretty clear, however, that, to the Chinese, the war appeared to have been fought by the British to compel them to legalize the importation of Indian opium, and, therefore, they were surprised when, in the treaty of peace which was drawn up by their victorious foe, there was no mention of this subject.[2] Just why this was so, is not perfectly clear, but in result, the situation was left worse than it was before the war, for now the trade was neither regulated nor legalized. " The result was

[2] By Article IV of the Nanking Treaty the Chinese were obligated to pay $6,000,000 in compensation or indemnity for the destruction in 1839 at Canton under Commissioner Lin's orders, of the stocks of opium held by foreign traders. It was, therefore, not unnatural that this should have tended to convince the Chinese that the war had been fought in the interest of the opium trade.

to drive the importers into closer relations with the officials, who were in a position to impede the traffic at all places along the coast; to what extent they, and to what extent the purchasers, made the actual arrangements, who was the active agent in perverting from their duty the only too willing representatives of the humiliated Emperor, is not known, because the whole traffic during this period is covered with a veil of secrecy and mystery. From this driving of the traffic away from the light of day, from the increased activity of the importers in supplying an increased demand, from the greater enterprise of the smugglers, whether they were foreign or Chinese, and from the greater laxity and depravity of the officials of China—from all these causes came two consequences: from the 20,619 chests in 1838 the import of opium increased to about 50,000 chests in 1850, and to 85,000 chests in 1860; and, as opium had debauched the Chinese, the opium traffic debauched the foreign traders and dragged them down from their high estate."[3]

In 1858, by the Sino-British Tientsin Treaty, the importation of opium for the first time, since the original prohibition, became legalized. The Chinese finding themselves unable to prevent the extensive smuggling in of the drug, now placed its importation upon a recognized basis, a duty of thirty taels per picul (133 pounds) being imposed.

This provision is found in the Rules of Trade established in pursuance of Articles XXVI and XXVIII of the treaty. Rule 5 reads: "The restrictions affecting trade in opium, cash, grain, [etc.], . . . are relaxed under

[3] Morse, *Op. cit.*, p. 346.

the following conditions: Opium will henceforth pay 30 taels per picul import duty. The importer will sell it only at the port. It will be carried into the interior by Chinese only, and only as Chinese property; the foreign trader will not be allowed to accompany it. The provisions of Article IX of the Treaty of Tientsin by which British subjects are authorized to proceed into the interior with passports to trade, will not extend to it, nor will those of Article XVIII of the same treaty, by which the transit dues are regulated; the transit dues on it will be arranged as the Chinese Government sees fit; nor, in future revisions of the Tariff, is the same rule of revision to be applied to opium as to other goods."[4]

In 1876 by the Chefoo Convention, Great Britain agreed that the likin tax on imported opium should be collected at the same time as the import duty was paid. In 1885, the amount of this likin tax was fixed at 80 taels a picul, that is, including the import duty, a total of 110 taels a picul. This remained the amount that the Chinese Imperial Government might collect until 1911, when the British Government agreed that it might be increased to 350 taels.

[4] Commenting upon the circumstances under which this legalization of the trade was effected, Morse says (*Op. cit.*, p. 23): "The smuggling had reached tremendous proportions, demoralizing the officials whose duty it was to enforce the law and to the merchants to whom it was a forbidden trade. The American Envoy was appalled by the demoralization and suggested legalization as the lesser of the two evils. Lord Elgin, who was in a position to dictate terms, was reluctant to take the initiative; but the Chinese negotiators were ready to relieve the financial difficulties of the Empire by securing for the treasury the revenue which prohibition only diverted into private pockets; and the trade was legalized by including opium in the tariff which was appended to the treaty." See also, for a fuller statement of the suggestion from the American Envoy that the trade be legalized, pp. 348 *et seq.* of Morse's volume.

In 1887 there were further regulations agreed upon with a view to controlling the smuggling of the drug into China from Hongkong and Macao.

America and the Chinese Opium Trade. In its treaty of 1844 (Article XXXIII) with China, the United States had agreed that its citizens who might attempt to trade clandestinely with such parts of China as were not open to foreign trade, or who should trade in opium or any other contraband article of merchandise, should "be subject to be dealt with by the Chinese Government, without being entitled to any countenance or protection from that of the United States." Furthermore, the United States undertook to take measures to prevent its flag from being abused by subjects of other nations as a cover under which to violate the laws of the Chinese Empire.

In 1858 by the Tientsin Treaty with China, the United States adopted the same trade regulations as those of Great Britain, including the legalization of the importation of opium with a duty of 30 taels per picul.

In 1880 the American and Chinese Governments mutually agreed that Chinese subjects should not be permitted to import opium into any of the ports of the United States, and also that American citizens should not import opium into any of the open ports of China or transport it from one open port to another, or buy or sell opium in any of the Chinese open ports. "This absolute prohibition," the treaty declared, "which extends to vessels owned by the citizens or subjects of either Power, and employed by other persons for the transportation of opium, shall be enforced by appropriate legislation on the part of China and the United States; and the benefits

of the favored nation clause in existing treaties shall not be claimed by citizens or subjects of either Power as against the provisions of this article.'' [5]

By Article XVI of the Sino-American Treaty of 1903, the American Government agreed to the prohibition by the Chinese Government of the importation into China of morphia and of instruments for its injection, excepting such amounts or instruments as might be needed for medicinal purposes, and under regulations to be framed by China which would restrict the use of such imports to such purposes. '' This prohibition,'' the treaty declared, '' shall be uniformly applied to such importation from all countries. The Chinese Government undertakes to adopt at once measures to prevent the manufacture in China of morphia and of instruments for its injection.''

The foregoing provisions in the American treaty were agreed to by all the other Treaty Powers and went into effect January 1, 1909.

China Prohibits the Smoking of Opium. In 1906 in response to a great agitation which had been carried on by enlightened Chinese, the Imperial Government issued an edict providing that all opium smoking should cease within ten years, and that measures be devised for the prevention of the cultivation of the poppy plant within the empire. These regulations were issued in November of the same year, and were supplemented by further edicts in 1907.

[5] The legislation called for by this provision was embodied in the Act of Congress of February 23, 1887 (24 Stat. at Large, p. 409). By the act of February 14, 1902, the importation of opium into the Philippine Islands was prohibited.

Anglo-Chinese Agreement of 1907. By an agreement negotiated during December, 1907, and the following January Great Britain agreed to reduce each year the export of opium from India to all countries by one-tenth of the annual import of Indian opium into China, China at the same time agreeing to take effective steps to reduce by one-tenth each year the cultivation of the poppy within her own borders. This agreement was to run for three years at the expiration of which time, if it was found that China was faithfully and effectively carrying out her part of the bargain, the arrangement was to continue until, at the end of ten years, the cultivation of the poppy in China would be wholly stopped and the importation of Indian opium reduced to 16,000 chests per annum.

On May 8, 1911, the three years having elapsed, and China having been shown to have carried out thus far her part of the bargain, an agreement between Great Britain and China was entered into under the terms of which China was to continue to diminish the production of opium within her borders in the same proportion that the annual export of opium from India was to be reduced by the British Government.[6] Article II provided: "His Majesty's Government agree that the export of opium from India to China shall cease in less than seven years if clear proof is given of the complete absence of production of native opium in China." Furthermore, Great Britain agreed that, without waiting for the expiration of the seven years, Indian opium should not be carried into any Province of China which could establish by clear evidence that it had effectively suppressed the cultivation

[6] For the texts of the so-called "Ten-Year Agreement" of 1907-8, and of the Convention of 1911, see MacMurray, No. 1911/4.

and importation of native opium, with the proviso, however, that the ports of Shanghai and Canton should not be closed to the drug until the final steps were taken by the Chinese Government for the total suppression of the trade and production.

There can be no question that, after the Republican Revolution of 1911, and the administrative demoralization which followed, the measures of the Chinese Government for the suppression of the cultivation of opium were not as effectively enforced as they previously had been, and there is some evidence to the fact that the growing of the poppy has been upon the increase in some of the Provinces. Great Britain, however, did not raise the point that the agreements of 1907 and 1911 had not been fully carried out upon the part of China, and therefore, on December 31, 1917, the importation of opium into China and its cultivation in China became illegal.

International Opium Commission at Shanghai. In February, 1909, an international Opium Commission met at Shanghai, at the suggestion of the United States, to consider the matter of the production, sale and use of opium and its derivatives, which, it was recognized, had become a matter of serious import to all the civilized peoples of the world, and which could be effectively regulated only by the concerted action of all or at least the more important, of the Powers. The technical basis for this Commission was found in the provision made by the First Hague Conference for the assembling of "International Commissions of Inquiry." The more important of the findings of this Commission were as follows:

The sincerity of the efforts of the Government of China

to eradicate the production and suppress the consumption of opium throughout its territories was recognized. The recommendation was made that each delegation should move its own Government to take action to suppress the smoking of opium within its own borders, due regard being had for varying circumstances of each country.

The Commission found that " the use of opium in any form otherwise than for medical purposes is held by almost every participating country to be a matter for prohibition or for careful regulation; and that each country in the administration of its system of regulation purports to be aiming, as opportunity offers, at progressively increasing stringency."

It was also found that each of the governments represented had strict laws upon their statute books aimed directly or indirectly at preventing the smuggling of opium and its derivatives, and the opinion was declared by the Commission that " it is also the duty of all countries to adopt reasonable measures to prevent at points of departure the shipment of opium, its alkaloids, derivatives, and preparations, to any country which prohibits the entry of opium, its alkaloids, derivatives and preparations."

The Commission further found that the manufacture, sale and distribution of morphia, already constituted a grave danger, and that the morphia habit showed signs of spreading.

Finally, with reference especially to the situation in China, the Commission urged that those nations having " concessions " or " settlements " in China should take effective steps to close up opium divans in them, and that

each delegation should move its Government to enter into negotiations with the Chinese Government with a view to effective and prompt measures for the prohibition in such concessions or settlements of the trade and manufacture of such anti-opium remedies as contained opium or its derivatives.

International Opium Conference of 1911 at The Hague. Following directly from the Commission of Inquiry which had been held at Shanghai, came the International Conference which was convened in 1911 at the Hague in order to give effect to the recommendations which the Commission had made. The labors of the Conference resulted in the draft of an International Opium Convention which was signed on January 23, 1912.[7]

This instrument provided in substance as follows:

1. The Powers should enact effective laws or regulations for the control of the production and distribution of raw opium in case such laws were not already in force.

2. With due regard to differences in commercial conditions, they would limit the number of ports through which the export or import of raw opium would be permitted.

3. They would prohibit the export of raw opium to countries which might prohibit its import; or control export to countries which might restrict its importation.

4. They would prohibit the import or export of raw opium except by duly authorized persons.

5. They would take measures for the gradual and effective suppression of the manufacture of, or internal trade in, and use of prepared opium, due regard being had to the varying circumstances of each country.

[7] For the texts of the Convention and of the Protocols of the First, Second and Third Conferences, see MacMurray, No. 1912/2.

6. They would prohibit the import and export of prepared opium; those Powers, however, which were not ready to take this step immediately, to take it as soon as possible, and, in the meantime, to restrict the number of places from which the prepared opium might be exported, to prohibit its export to countries which forbade its import, and not to permit export except by specially authorized persons and under conditions of making, etc., which would comply with the regulations of the importing country which might desire to restrict its entry.

7. Medicinal opium was defined to include drugs containing not less than ten per cent. of opium, and specifically held to include morphia, cocaine, and heroin, and the undertaking entered into to enact laws or regulations to confine to medical and legitimate purposes the manufacture, sale, and use of these drugs and their respective salts. The nations were to co-operate with one another to prevent the use of these drugs except for medicinal purposes.

8. The contracting Powers were to use their best efforts to control all persons manufacturing, importing, selling, distributing and exporting morphia, cocaine, and their respective salts, as well as the buildings in which such industry or trade might be carried on, and, to this end, to establish certain measures which the convention enumerated.

9. They would prohibit, as regards national trade, the delivery of morphia, cocaine, etc., to unauthorized persons.

10. They would take measures to ensure that these drugs should not be exported from their ports or colonies or leased territories, or other possessions, to countries or

their possessions except when consigned to persons furnished with licenses or permits by the importing country. With this object in view each government was to communicate from time to time to the governments of the exporting countries lists of the persons so authorized to import.

11. They would consider the possibility of enacting laws making it a penal offense to be in illegal possession of raw opium, morphine, cocaine, and their respective salts.

Articles XV to XIX inclusive related specifically and especially to conditions in China, and provided:

a. The Treaty Powers, in conjunction with the Chinese Government to take the necessary steps to prevent smuggling of opium and its derivatives into China as well as into their Far Eastern possessions and leased areas in China; the Chinese Government on its part, to take steps to prevent smuggling of the drugs from China into the territories mentioned.

b. The Chinese Government to promulgate pharmacy laws regulating the sale and distribution of opium and its derivatives. These laws the Treaty Powers were to examine, and, if found acceptable, to apply them to their nationals residing in China.

c. The Treaty Powers to adopt measures to restrict and control the smoking of opium in their leased territories, settlements, and concessions in China, and to suppress existing opium dens, and prohibit the use of the drug in places of entertainment and brothels.

d. The Powers to take effective measures, in concert with China, to reduce the number of places in which raw or prepared opium might be sold.

e. Those Powers having post offices in China to adopt effective measures to prevent the illegal import into China or their illegal transmission from place to place in China, of opium and its derivatives.

The following *voeux* were also expressed:

"I. The Conference considers it desirable to direct the attention of the Universal Postal Union—

"1. To the urgency of regulating the transmission through the post of raw opium;

"2. To the urgency of regulating as far as possible the transmission through the post of morphia, cocaine, and their respective salts and other substances referred to in Article XIV of the Convention;

"3. To the necessity of prohibiting the transmission of prepared opium through the post.

"II. The Conference considers it desirable to study the question of Indian hemp from the statistical and scientific point of view, with the object of regulating its abuses, should the necessity thereof be felt, by internal legislation or by international agreement."

The Convention was to go into force three months after notification that it had been ratified by the Governments of all the signatory Powers.

Second International Opium Conference at The Hague, 1913. The first International Opium Conference had been attended by twelve Powers and the Convention drawn up by it was signed only by these twelve. There was, however, a provision that other Powers should be asked to sign and the United States was requested to obtain, if possible, the adherence of the Latin-American States, and, as a result all those States have since given their adher-

ence to the agreement. The signatures of all the other European States, which the Netherlands Government sought to secure, were not obtained, and, therefore, in pursuance of a permissive provision of the agreement of January 23, 1912, the Netherlands Government invited the Powers again to send representatives to the Hague in order that steps might be taken to secure, if possible, the adherence of the Powers that had not signed, or, failing complete success in that respect, to provide that the Convention might go into effect, as to the Government that might sign it.

This Second Conference adopted a resolution expressing the wish that the as yet non-signatory Governments should sign, and that "in case the signature of all Powers invited . . . shall not have been secured by the 31st of December 1913, the Government of the Netherlands will immediately invite the signatory Powers on that date to designate delegates to take up the question whether it is possible to put the International Opium Convention of January 23, 1912, into operation."

Third International Opium Conference at The Hague, 1914. In pursuance of this last provision, a Third International Opium Conference was convoked at the Hague on June 15, 1914, which resolved that it would be possible to bring the Convention into force as to agreeing Powers notwithstanding that some of the originally invited Powers might not have signed it, and fixed December 31, 1914, as the date when the Convention should become binding upon the Governments accepting it. It was provided, however, that opportunity should still remain for other Powers, after that date, to give their adherence to it.

The Chinese Government gave its adherence to the Convention on February 11, 1915.

At the present writing (February, 1920) the Convention of 1912 has been signed by the following Powers: Denmark, Siam, Guatemala, Honduras, Venezuela, United States of America, Portugal, China, Sweden, Belgium, Italy, Great Britain, Netherlands, Nicaragua, Norway, Brazil, Equador, Uruguay and Spain.[8]

The Convention has been *signed,* but not yet *ratified,* by Germany, Japan, Persia, and Russia, original Powers represented at the First Conference, and also by a large number of invited Powers who were not represented at the First Conference.

Paris Treaty of 1919. By Article 295 of the Paris Treaty of 1919 with Germany it is provided as follows:

> Those of the High Contracting Parties who have not yet signed, or who have signed but not yet ratified, the Opium Convention signed at The Hague on January 23, 1912, agree to bring the said Convention into force, and for this purpose to enact the necessary legislation without delay and in any case within a period of twelve months from the coming into force of the present Treaty.
>
> Furthermore, they agree that ratification of the present Treaty should in the case of Powers which have not yet ratified the Opium Convention be deemed in all respects equivalent to the ratification of that Convention and to the signature of the Special Protocol which was opened at The Hague in accordance with the resolutions adopted by the Third Opium Conference in 1914 for bringing the said Convention into force.

[8] The "Protocol" for putting the Convention into force has been signed by the United States, China, Netherlands, Honduras, Norway, Belgium and Luxembourg.

For this purpose the Government of the French Republic will communicate to the Government of the Netherlands a certified copy of the protocol of the deposit of ratifications of the present Treaty, and will invite the Government of the Netherlands to accept and deposit the said certified copy as if it were a deposit of ratifications of the Opium Convention and a signature of the Additional Protocol of 1914.

Events in China Relating to Opium Since 1917. It has already been seen that under the Anglo-Chinese Agreement of 1911 foreign trade in and domestic production of opium was to become illegal, so far as China was concerned, December 31, 1917. By an agreement entered into on May 1, 1915, between the Shanghai and Hongkong Opium "Combines" which then held large stocks of opium, and a Special Envoy of the Chinese Government for the prohibition of the sale of opium in the Provinces of Kiangsu, Kiangsi, and Kwangtung, the Envoy had agreed to petition the Chinese Government to take stringent and effective measures for the detection and suppression of the illicit sales of opium with a view to its extinction and to enable the Combines to dispose of their stock of Indian opium within the period ending March 31, 1917. As this date approached, the Combines found that they would not be able to sell the great amount of the drug which they still had on hand, and which, at the then current market rates was worth a good many millions of dollars. After much talk, with suggestions of foreign intervention on behalf of the Combines, for which there was no basis whatever, and allegations of bribery which, upon their face, did not seem incredible, an agreement was signed on January 28, 1917, between the Shanghai Opium Combine and Feng Kuo-Chang, the Tuchun of

Kiangsu, the Civil Governor of Kiangsu, and the Special Envoy for the prohibition of the sales of opium in Kiangsu, Kiangsi, and Kwangtung, acting for the Chinese Government, according to which the Chinese Government was to purchase from the Combine the residue of stock of Indian opium remaining in the hands of the Combine on March 31, 1917 (excluding the stock of opium in Hongkong on January 1, 1917), at 8200 Taels of Shanghai Sycee per chest. The number of chests thus to be purchased was estimated at 2100. The object of the Government in purchasing the opium was declared to be that it might be used for medicinal purposes and not otherwise for gain. Payment was to be made in Chinese Government bonds secured on revenue derived from the Stamp Duty.

It was soon rumored that it was the intention of those interested in this transaction to resell the opium to a Shanghai syndicate at an advanced price, the Syndicate, it being alleged, to advance $5,000,000 to the Peking Government and to obtain the right to sell the opium in the Provinces of Kiangsu and Kiangsi. This plan aroused such widespread opposition upon the part of enlightened Chinese and brought forth such strong protests from the American and British Governments as being in substantial violation of the Agreement of 1911, that, in result, the Chinese Government bought twelve hundred chests, the amount then held by the Combine, and, in January, 1919, publicly destroyed it.

Smuggling and Sale of Morphia in China by the Japanese. There is no question that during recent years great amounts of morphia have been illegally introduced and

sold in China, and administered to the natives in the form of hypodermic injections. The responsibility for this has been laid almost wholly upon the Japanese, the drug being brought into the country, it has been claimed, either under the guise of military supplies or through the Japanese parcel post system. The Japanese Government has insisted that it has never given any official sanction to this trade, but has been compelled to admit the extensive participation of its nationals in it, and has expressed its intention to make greater efforts in the future to control its subjects in this respect.

Persian and Turkish Opium. Persia and Turkey not being Powers in treaty relation with China, China is able to deal with them free from any contractual obligations. She therefore prohibited the import of Turkish and Persian opium, such prohibition becoming effective January 1, 1912.

BIBLIOGRAPHICAL NOTE

A very great deal has been written with regard to the Opium Question in its relation to China. The more important documents and facts may, however, be readily obtained from the following sources:

American Journal of International Law, Supp. Vol. VI (1912) pp. 177-192 (Text of the International Opium Convention of January 23, 1912).

American Journal of International Law, Suppl. Vol. III (1909) pp. 253-276 (documents).

American Journal of International Law, Vol. VII (1913) pp. 838-847 (The Second International Opium Conference).

American Journal of International Law, Vol. III, pp. 648-673, and 828-868 (Two articles by Dr. Hamilton Wright on The Shanghai International Opium Commission).

American Journal of International Law, Vol. VI (1912) pp. 865-889, and Vol. VII (1913) pp. 108-139 (Two articles by Mr. Hamilton Wright on The International Opium Conference at The Hague).

China Year Book, 1919, Chapter XXVIII, pp. 664-691.

China and the Far East. Clark University Lectures, published in 1910. Chapter IX, by Mr. Hamilton Wright entitled "The Opium Problem: Its History and Present Condition."

Far Eastern Review, June, 1917, and July, 1918 (Events since 1917).

Trade and Administration of China, by H. B. Morse, Chapter XI.

CHAPTER XIX

China's Foreign Debts and Financial Commitments

The attempt will be made in this chapter to discuss the present financial obligations of the Chinese Government only in so far as they concern China's relations to foreign Powers or to their banking groups.

Certain Features of Chinese Loans. Certain special features which have characterised the public loans of China have first to be mentioned in order that the significance of what follows may be clearly appreciated.

1. Although the potential financial resources of the Chinese people are very great, it has not as yet been practicable for the Government to utilize them except to a very slight extent. During recent years many new taxes have been authorized by the Peking Governmnt and, in some cases, fairly effectively collected, but it still remains true that the Chinese people are very lightly taxed.[1] The *per capita* accumulated wealth is very small, but none the less there are many great fortunes and a still greater number of moderately large ones in China, and, therefore, could the Chinese Government command the full confidence of its own subjects, it would be able to float large domestic loans. In fact, however, it has not been able to command this confidence and therefore has been obliged to resort to foreign money markets when

[1] It is true that the Chinese people obtain comparatively little from their Government in return for the taxes they do pay.

funds in adddition to those obtainable from taxation have been needed.[2]

2. The foreign loans to China, though made by private banking interests, have, in almost all cases, had back of them the approval and diplomatic support of their respective Governments which have used almost every possible mode of international action to enforce the claims which their respective nationals have based upon their contracts with the Chinese Government. In fact, it has been practically impossible to distinguish between the public and private obligations of the Chinese Government. In this connection may be quoted the following illuminating paragraph from Mr. MacMurray's Introductory Note to his compilation of China's Treaties. After referring to the various periods of China's international relations, Mr. MacMurray says:

> Throughout these phases of development, financial, economic and industrial concessions have been made the objects of international policies; such advantages have been sought by Governments,—both directly, in the form of general conventional stipulations, and indirectly, in the form of special grants to particular banks or industrial organizations,—through all the means available to one State in its intercourse with another, the holders of such concessions have often spoken with the voice of their Governments in insisting upon

[2] Some domestic loans were floated, especially during the early years of the Republic. These loans though large in nominal amount, were greatly undersubscribed, and thus did not meet even the most pressing public needs. During the last few years, so great has been the administrative and political demoralization of the country, the successful flotation of a domestic loan of any considerable size has been an impossibility. The several domestic loans issued by the Republic are enumerated by MacMurray in the footnotes to No. 1913/2 which gives the text of the First Year (1912) Loan. The general fate of these domestic loans has been that the unsubscribed portions have been held until the government has reached a situation of financial extremity, when they have been peddled off to foreign (Belgian and Japanese) banks at a ruinously low price.

their own construction of the rights granted to them; and such commitments to individuals of one nationality, even when left unutilized and allowed to lapse by the terms of the concession, have now and again been claimed as a basis of protest against a grant to nationals of any other country. The result of this merging of individual with governmental interests has been that matters which would elsewhere be of merely commercial character, susceptible of judicial determination in case of dispute, are in China matters of international political concern, for the settlement of which the ultimate recourse is to diplomatic action. It is thus in a sense true that the international status of the Chinese Government is determined and conditioned by its business contracts with individual firms or syndicates, scarcely if at all less than by its formal treaties with other Governments. It is at any rate seldom that any international situation relating to China can be fully understood without reference to the intricate fabric of quasi-public as well as of public obligations which qualify the freedom of action of the Chinese Government.

3. The lending Powers, if we may speak of them as such, have operated in the main through particular banking or investment agencies, and have applied their chief diplomatic and official support to those agencies. Thus Japanese loans have been made, for the most part, through the Yokohama Specie Bank (the official representative of Japanese financial interests in the international Consortium for Chinese business), and a syndicate consisting of the Bank of Taiwan, the Bank of Chosen, and the Industrial Bank of Japan, which syndicate has enjoyed the support of the Japanese Government in transactions independent of the Consortium. The three banks in the syndicate have done business separately, but, in the main, their activities in China have been joint operations.[3]

[3] Also might be mentioned the Chinese Exchange Bank which, though nominally a Sino-Japanese concern, is actually controlled by the Japanese.

British financial interests have operated through the Hongkong and Shanghai Banking Corporation, and the British and Chinese Corporation, formed, in 1908, by the Hongkong and Shanghai Banking Corporation and the trading firm of Jardine, Matheson and Company.

German financial interests have operated in China through the Deutsch-Asiatische Bank.

Russian financial interests have employed as their agency the Banque Russo-Asiatique, earlier known as the Banque Russo-Chinoise.

France has used the Banque de l'Indo-Chine, and, in association with it, the Crédit Lyonnais, the Comptoir National d'Escompte de Paris, and other banks.

Belgium has used the Société Belge d'Etudes de Chemins Fer en Chine.

American interests, for the most part, have acted through a banking group (originally constituted by J. P. Morgan and Company, Kuhn, Loeb and Co., the First National Bank of New York, and the National City Bank of New York), the International Banking Corporation, and Lee, Higginson and Co.[4]

4. A number of the loans have carried with them preferences or options with regard to future loans.

5. In very many cases the determination by China as to the parties from whom the loans were to be obtained has been controlled by the "Spheres of Interest" claimed by the several Powers in China.

6. Some of the loans, especially those for general governmental expenses or for purposes of administrative reorganization, have carried with them specified amounts of "control" over certain of the revenue services of

[4] But see *post* as to the proposed new international Consortium.

China as well as over the manner in which the proceeds of the loans were to be expended.

7. And, finally, most of the railway and mining loans have carried with them rights of control, upon the part of the lending parties, alike over the construction and operation of the roads or mines and over their finances. These rights of control will be more specifically described in the chapter which follows dealing with Railway Rights in China. The earliest of these loans were made directly by the Chinese Government, but the later ones, not so made, have been guaranteed by that Government as to interest and amortization payments, and, in some cases, certain public (provincial) revenues have been pledged as security.

China's Public Debts Classified. The public debts, as determined by the purposes for which they were contracted, may be divided into three classes: (1) War and Indemnity Loans, (2) General or Administrative Loans and (3) Industrial, that is, Railway and Mining Loans.[5]

[5] There are also provincial and so-called private and short-term loans, and also domestic loans, which because they have no bearing upon foreign relations, are not considered in this volume.

With regard to long term Domestic Loans, the China Year Book for 1919 gives the following information:

"A new departure in China's financial history was made with the successful flotation of a domestic loan in 1914. The amount fixed, $16,000,000 was oversubscribed by $8,000,000, and the loan was accordingly raised to $24,000,000, carrying six per cent. interest. Repayment is to begin with the fourth year with a drawing of one-ninth of the total. In 1915 a second domestic loan for $24,000,000 was floated, the Hong Kong and Shanghai Banking Corporation agreeing to act as one of the issuing and subscription agencies. The rate was 6 per cent., and the issue price 90, the loan to be repaid in eight years. This loan, which was also oversubscribed, substantial contributions coming from Chinese overseas, is secured on Native Customs and Shansi likin, and the Ministry of Finance undertakes to hand

War and Indemnity Debts. Until the Chinese-Japanese War of 1894 China had had practically no foreign debt. For the waging of that war and the payment of the indemnity exacted by victorious Japan, China was obliged to borrow large amounts from abroad.[6]

Franco-Russian Loan of 1895. By a contract signed July 6, 1895, China borrowed from a Franco-Russian syndicate 400,000,000 francs at four per cent., the issue price being 94½ (the Chinese receiving, however, 94⅛) the loan to be repaid in thirty-six years, amortization to begin in 1896, and secured by revenues from the Maritime

to the Inspector-General of Customs the equivalent of the first year's interest and to pay subsequently $120,000 monthly for interest in the succeeding years.

"In April, 1918, regulations were sanctioned by the President for the floating of the Seventh Year Domestic Loan of the Republic for $93,000,000, to enable the Government to pay off its indebtedness to the Bank of China and the Bank of Communications. Two bond issues were to be made simultaneously, one called the Short Term Loan Bonds (5 year, 6 per cent. bonds), to the amount of $48,000,000 redeemable within five years by semi-annual drawings of one-tenth of the total, and payable from monthly instalments released by the Maritime Custom of the Deferred Boxer Indemnity Fund, the other, called the Six Per Cent. Public Loan Bonds, to the amount of $45,000,000 (20 year bonds) redeemable after ten years by semi-annual drawings of one-twentieth of the total, and secured by a second charge on the Native Customs duties.

"In addition to the above loans the Government is responsible for the Military Public Loan issued in 1911, at Nanking for $6,367,640, bearing 8 per cent. interest. The terms of repayment provide for payment of one-fifth of the amount annually from the second year. A public drawing was held in Peking on February 20, 1915, and bonds to the value of $1,153,528 were redeemed. A six per cent. "Public Loan" of $4,006,920 also dates from the first year of the Republic. Interest on this loan has been paid once; repayment starts from the fifth year."

[6] The indemnity to Japan, including the additional sum exacted because of the retrocession of the Liaotung Peninsula, amounted to Tls. 230,000,000.

Customs and the guarantee of the Russian Government.[7] Section 9 of the Articles of Agreement read: "The present loan is guaranteed by the duties levied by the Maritime Customs of China, and by the deposit of customs bonds. Furthermore, in the event that the service of the loan should for any reason whatsoever come to be suspended or delayed, the Imperial Government of Russia, by agreement with the Imperial Government of China, undertake, *vis à vis* the contracting banks and firms, the obligation to find, itself, and to place at their disposal in good time, as they fall due, whatever sums are necessary for the payment of the coupons and of the amortized bonds of the present loan."

This undertaking upon the part of the Russian Government was embodied in an exchange of declarations by the Russian and Chinese Governments.

In the protocol of these declarations it was declared that until the loan should be fully liquidated, "no other Chinese loan subsequently concluded shall be served out of the receipts of the Chinese Maritime Customs before full provision shall have been made for the service of the interest and amortization of the above-mentioned loan." It was also provided that should the Russian Government be called upon to make good its guarantee the Chinese Government would furnish the Russian Government with additional security, the nature of which would be the subject of a special agreement to be negotiated between the plenipotentiaries of the two Powers at

[7] For texts of this loan contract and of this declaration and accompanying protocol, and of the contract of guarantee given by the Russian Ministry of Finance to the lending syndicate, see MacMurray, Nos. 1895/6 and 1895/7.

Peking. The protocol contained the following undertaking:

> In consideration of this loan the Chinese Government declares its resolution not to grant to any foreign Power any right or privilege under any name whatsoever concerning the supervision or administration of any of the revenues of the Chinese Empire. But in case the Chinese Government should grant to any one Power rights of this character, it is understood that from the mere fact of their being so granted, they should be extended to the Russian Government.

The declarations were stated to have the same force and value as a treaty.

Of this loan, £8,350,553 was outstanding on December 31, 1918.[8]

Anglo-German Loan of 1896. In 1896, by a contract signed on March 23,[9] China borrowed £16,000,000 from an Anglo-German syndicate composed of the Hongkong and Shanghai Banking Corporation and the Deutsch-Asiatische Bank. This loan was to bear five per cent. interest, to be issued at 98¾ and 99, the Chinese to secure 94, the term to be thirty-six years, redemption to be made, however, by yearly sinking-fund payments, and the entire loan "subject to previous loans charged on the same security and not yet redeemed," to be a lien upon the Imperial Maritime Customs and to have priority both as to principal and interest over all future loans, charges, and mortgages so long as the loan or any part of it should be unredeemed. "No loan, charge or mortgage," the agreement ran, "shall be raised or created which shall

[8] *China Year Book*, 1919, p. 351.
[9] For text, see MacMurray, No. 1896/2.

take precedence of or be on equality with this loan or which shall in any manner lessen or impair its security over the said Customs Revenue so far as required for the annual services of this loan and any future loan charge or mortgage charged on the said customs revenue shall be made subject to this loan and it shall be so expressed in every agreement for any such future loan charge or mortgage. In the event of the Imperial Maritime Customs Revenue of China, at any time proving insufficient to support the service of the interest or repayment of the principal of this loan the Imperial Chinese Government will provide the funds required for the same from other sources. The administration of the Imperial Maritime Customs of China shall continue as at present constituted during the currency of this loan."

A schedule of interest and sinking fund payments was attached to the loan agreement.

Of this loan there was outstanding and unpaid on December 31, 1918, £9,571,500.[10]

Anglo-German Loan of 1898. In 1898 (March 1) China was compelled again to make a foreign loan [11] in order to meet her obligations to Japan under the indemnity provisions of the treaty of Shimonoseki. This loan, like its predecessor, was obtained from the Hongkong and Shanghai Banking Corporation and the Deutsch-Asiatische Bank. Its principal was £16,000,000, with an interest rate of 4½ per cent., issue price of 90, yielding 83 to the Chinese, was to run for forty-five years, and to constitute a charge on the Maritime Customs, subject to

[10] *China Year Book*, 1919, p. 351.

[11] For the text of the loan contract, see MacMurray, No. 1898/3.

previous charges thereon. In addition, the loan was to constitute a first charge, free from all incumbrances, upon the general likin tax of Soochow, Hung Hu, Kiukiang and Eastern Chekiang, and the Salt Likin of Ichang, Hupeh, and Anhui. The loan agreement expressly provided that the entire loan, principal and interest, should have priority over all future loans, charges, or mortgages that might be charged upon these likin revenues, and that the administration of the Chinese Imperial Customs should not be changed during the currency of the loan. In order that still greater security might be provided, the agreement provided:

> In the event of the Customs and Likin revenues specified and pledged by this clause being at any future time insufficient for the service of principal and interest of this loan, either owing to depreciation of silver, diminution of revenue or any other cause the Chinese Imperial Government hereby engage to appropriate, and forthwith place under the control of the Inspector General of Maritime Customs, further revenues sufficient to complete the amount required.
>
> In the event of the Chinese Government, during the currency of this loan, entering upon negotiations for a revision of Customs tariff accompanied by stipulations for decrease or abolition of Likin, it is hereby agreed, on the one hand, that such revision shall not be barred by the fact that this loan is secured by Likin, and, on the other hand, that whatever Likin is pledged for the service of this loan shall neither be decreased nor abolished except by arrangement with the Banks and then only upon the increase of Customs revenue consequent on such revision.

The amount of this loan, outstanding on December 31, 1918, was £12,385,000.[12]

[12] *China Year Book*, 1919, p. 351.

Boxer Indemnities. As a result of the outrages committed in 1900 by the Boxers, more or less aided or sanctioned by the Imperial Chinese Government itself, indemnities to the Treaty Powers amounting to £67,500,000 (450,000,000 Haikwan taels) were levied by the final protocol of 1901 against China. This total was divided into five sums, bearing interest at 4 per cent., and made payable in instalments covering a period of thirty-nine years.[13]

As security for the payment by China of these indemnity payments the following revenues of the Chinese Government were assigned:

1. The balance of the revenues of the Imperial Maritime Customs after payment of the interest and amortization of preceding loans secured on these revenues, plus the proceeds of the raising to five per cent. effective of the present tariff on maritime imports, including articles until now on the free list, but exempting foreign rice, cereals, and flour, gold and silver bullion and coin.
2. The revenues of the native customs, administered in the open ports by the Imperial Maritime Customs.

[13] Schedules were attached to the Final Protocol of 1901, for which see MacMurray, No. 1901/3. At the time China declared war on Germany and Austria-Hungary she of course suspended all payments on the amounts due those countries, and by the treaties of peace which have been drawn up, those countries surrender to China all further claims to their indemnities. China has signed the draft treaty of peace with Austria but not with Germany.

A loan of £1,000,000 for "Exchange Adjustment of Indemnity" was obtained from the Hongkong and Shanghai Banking Corporation and the Deutsch-Asiatische Bank in 1905, but this loan has since been repaid.

The apportionment of the total indemnity among the several Powers was arranged by the Protocol of June 14, 1902, printed in MacMurray, note to No. 1901/3.

By a Joint Resolution of May 25, 1908, the United States released China from the payment of a considerable part of the indemnity due to the United States under the Protocol of 1901. For details as to this see MacMurray, note to No. 1901/3.

3. The total revenues of the Salt Gabelle, exclusive of the fraction previously set aside for other foreign loans.

General Governmental and Administrative Reorganization Loans. Not until about the time of the establishment of the Republic did China find herself compelled to make foreign loans for the purpose of meeting her ordinary running expenses or for effecting a reorganization of her administrative services and the reform of her currency.[14]

Currency Loan of 1911. In 1911, by an agreement entered into April 15, between the Chinese Ministry of Finance and certain American, British, German, and French banking interests, a five per cent. sinking fund gold loan for £10,000,000, was contracted for.[15]

Of the proceeds expected to be derived from this loan, £8,500,000 was to be devoted to reforming China's currency.

Owing to the outbreak, near the close of the year, of the Revolution, this loan was never actually floated,[16] but the loan agreement itself has been continued in force, for periods of six months each, by successive agreements, as provided for in Article XVII of the agreement.[17]

[14] It is, however, to be noted that many of the loans made by China during the last few years, and especially those obtained from Japan, though nominally for the construction of railways or other public enterprises, have, in fact, been made to secure funds for meeting current governmental expenses, and the proceeds have been spent without any construction work being even attempted.

[15] The banks represented in this agreement were the following: J. P. Morgan & Co., Kuhn, Loeb & Co., the First National and the National City Bank, all of New York City; the Hongkong and Shanghai Banking Corporation; the Deutsche-Asiatische Bank; the Banque de l'Indo-Chine. For the text of the loan contract, see MacMurray, No. 1911/2.

[16] £400,000 was advanced under the agreement for plague relief and industrial expenses in Manchuria.

[17] Article XVII provided that extensions for a reasonable time might be

The agreement provided that the sums to be loaned should be made a first charge on the following revenues:

"(*a*) Duties on tobacco and spirits in the three Manchurian provinces, amounting to one million Kuping taels per annum.

"(*b*) Production tax in the three Manchurian provinces, amounting to seven hundred thousand Kuping taels per annum.

"(*c*) Consumption tax in the three Manchurian provinces, amounting to eight hundred thousand Kuping taels per annum.

"(*d*) Newly added surtax upon salt of all the provinces of China (authorized by imperial edict in the fifth moon of the thirty-fourth year of His Imperial Majesty Kuang Hsu), amounting to two million five hundred thousand Kuping taels."

asked for by the banks, and that, if the Chinese Government should refuse to grant such extension, the contract should become null and void "subject always to the repayment of advances." The loan agreement has several times been extended for periods of six months, the last of such extensions being in October, 1919.

On October 20, 1917 the American Legation at Peking communicated to the Chinese Government the following note in which it reserved its rights and interests in the Currency Loan notwithstanding the fact that the American Group of banks had withdrawn in 1913, from the International Consortium (see *post*, p. 500).

"Quite apart from any individual contractual interest accruing to 'The American Group' under the Currency Loan Agreement of April 15, 1911, the Government of the United States considers that the whole history of the currency loan project—notably the appeal made to it by the Chinese Government in January, 1904, the conferences with Dr. Jenks in 1903 and 1904, and the request for a loan for the purpose of monetary reform which in 1910 the Chinese Government addressed not to any individuals but directly to the American Government—constitutes in behalf of the Government of the United States such an interest in the project as entitles it to be considered in reference to any action which the Chinese Government may contemplate with a view to carrying that project into effect. This interest has never been abandoned by the Government of the United States." (MacMurray, note to No. 1911/2).

These provincial revenues were declared to be free from all other loans, liens, charges or mortgages.

The loan agreement also provided that should the revenues which have been mentioned prove insufficient to meet interest or repayments of the principal, the Chinese Government would, first from the Manchurian, and then, if necessary, from other sources, supply the balance required to meet such payments. Also, that so long as the loan might remain unpaid, there should be no interference with the pledged revenues; and that if there should be any default in any of the payments when due, the pledged revenue should forthwith be transferred to, and administered by, the Imperial Maritime Customs for the account of and in the interest of the holders of the bonds representing the loan.

Other clauses of the agreement provided that the loan, interest and principal, should always have priority of lien on the revenues specified; and that in the event of a revision of the customs tariff, accompanied by stipulations for the abolition of Likin, the revenues required for security of the loan should not be abolished or diminished except by a previous arrangement with the banks, and then only so far as an equivalent satisfactory to the banks should be substituted in the shape of a first lien on the other revenues consequent upon such tariff revision.

The proceeds of the loan were to be kept in banks designated by the banks signatory to the agreement; they were to constitute separate funds to be known as "The Chinese Government Currency Reform Account" and "The Chinese Government Manchurian Development Account," and payments therefrom were to be made only in conformity with the Chinese Government's require-

ments as specified in statements submitted by the Chinese Government, which Government was also to submit quarterly reports showing the disbursements incident to the inauguration and operation of the program of currency reform and the development of Manchurian industry. These conditions are of interest as showing at least an effort upon the part of the lending interests to keep informed as to whether or not the sums advanced by them were being actually expended by the Chinese authorities for the purposes for which they were ostensibly borrowed.

Article XVI of the loan agreement is of special interest since it granted to the signatory banks an option upon future foreign loans relating to the same matters. This article read:

> If the Imperial Government should desire to obtain from other than Chinese sources, funds in addition to the proceeds derived from this loan, to continue or complete the operations contemplated under this agreement, the Imperial Chinese Government shall first invite the [signatory] banks to undertake a loan to provide the funds required, but should the Imperial Chinese Government fail to agree with the banks as to the terms of such supplementary loan then other financial groups may be invited to undertake the same; and should the Imperial Chinese Government decide to invite foreign capitalists to participate with Chinese interests in Manchurian business contemplated under this loan, or to be undertaken in connection therewith, the banks shall first be invited to so participate.

Crisp Loan of 1912. After the establishment of the Republic the financial necessities of the new Government at Peking became very urgent and negotiations, presently to be described, were entered into with a group of British, French, German and American banks—the so-called Quadruple Group—for a considerable loan. While these

negotiations were pending, China entered into an agreement [18] with the London firm of C. Birch Crisp & Co. for a loan of £10,000,000, as security for which the salt revenues, subject to prior charges, were pledged, but with no control over Chinese financial administration except that, in case there was a default of payments due, the salt administration should be placed under the control of the Maritime Customs to the extent that might be necessary to meet the obligations accruing under the loan. The purposes of the loan were declared to be "to provide capital for the repayment of existing loans and for the reorganization of the Government and for productive works."

An interesting feature regarding this loan was that it represented an attempt upon the part of a British banking concern to float a Chinese loan without the affirmative approval and co-operation of the British Government which was then giving its support to the British banks included in the Quadruple Group. The result showed that this was not practicable, for but forty per cent. of the £5,000,000 of the loan offered in London was subscribed for by the public.

It may also be noted that it was claimed by the international "Consortium" of banks with which, as has been said, the Chinese Government was then negotiating, that the entering into this agreement with Crisp & Co. was in violation of the undertaking on the part of the Chinese Government that it would deal only with the Consortium. The Chinese Government, however, replied

[18] For the text of this contract, see MacMurray, No. 1912/9; for the agreement cancelling the contract save as to the £5,000,000 actually issued, see *idem.*, footnote to No. 1913/5.

that, at that time, the Consortium had not been willing to meet the wishes of the Chinese Government and that, therefore, it was at liberty to look elsewhere for funds. In result, however, the loan contract was cancelled except as to the amount that had been already advanced. Thus the second instalment of £5,000,000 of the Crisp loan has never been issued, and the amount of the loan now outstanding is £5,000,000.

The Six Power Consortium. After the conclusion of the Currency Loan of 1911 by the British, French, German, and American banking interests, the Russian and Japanese Governments asked that their respective banking interests be allowed to co-operate in future general loans to China. This was agreed to and on June 18, 1912, a formal agreement was entered into between the following banks: the Hongkong and Shanghai Banking Corporation, the Deutsch-Asiatische Bank, the Banque de l'Indo Chine, J. P. Morgan & Co., Kuhn, Loeb & Co., the First National Bank and the National City Bank (these four last-named constituting the "American group"), the Russo-Asiatic Bank, and the Yokohama Specie Bank.[19]

By this agreement these six foreign banks or groups of banks, acting not only for themselves but for syndicates of financial interests in their respective countries, agreed that they would participate equally and upon equal terms with regard to the proposed Reorganization Loan or any other future administrative, as distinguished from industrial, loans or advances which might be made

[19] For the text of this Inter-Bank Agreement, see MacMurray, note to No. 1913/5.

to the Chinese Government or to any of its provinces or to companies having Chinese Government or provincial buarantees, with the proviso that this should not be construed to include current banking business and small financial operations, nor loans that did not involve the issuance to the public of bonds or other securities. Should one or more of the parties decline to participate in a proposed loan, the other parties should be free to undertake the loan upon their part but the bonds should be issued only in their respective markets. Russia and Japan, however, obtained the entrance upon the minutes of the meeting of the banks of the following reservations:

In the event of the Russian and or Japanese Groups disapproving of any object for which any advance or loan under the agreement shall be intended to be made, then, if such advance or loan shall be concluded by the other groups or any of them and the Russian Government or the Japanese Government shall notify the other Governments concerned that the business proposed is contrary to the interests of Russia or Japan as the case may be, the Russian Group or the Japanese Group as the case may be shall be entitled to withdraw from the agreement, but the retiring group will remain bound by all financial engagements which it shall have entered into prior to such withdrawal. The withdrawal of the Russian or Japanese Group shall not affect the rights or liabilities of the other Groups under the Agreement.

It was understood that this reservation had reference to the "special interests" which Japan and Russia claimed in North China, Manchuria and Mongolia.

Withdrawal of American Banks from the Consortium. In 1913 the American banks withdrew from the consortium in consequence of the following announcement, made on March 18, 1913, by President Wilson:

We are informed that at the request of the last Administration a certain group of American bankers undertook to participate in the loan now desired by the Government of China (approximately $125,000,000). Our Government wished American bankers to participate along with the bankers of other nations because it desired that the good-will of the United States should be exhibited in this practical way, that American capital should have access to that great country, and that the United States should be in a position to share with the other Powers any political responsibilities that might be associated with the development of the foreign relations of China in connection with her industrial and commercial enterprises. The present Administration has been asked by this group of bankers whether it would also request them to participate in the loan. The representatives of the bankers through whom the Administration was approached declared that they would continue to seek their share of the loan under the proposed agreements only if expressly requested to do so by the Government. The Administration has declined to make such request, because it did not approve the conditions of the loan or the implications of responsibility on its own part, which it was plainly told would be involved in the request.

The conditions of the loan seem to us to touch very nearly the administrative independence of China itself, and this Administration does not feel that it ought, even by implication, to be a party to those conditions. The responsibility on its part which would be implied in requesting the bankers to undertake the loan might conceivably go to the length in some unhappy contingency of forcible interference in the financial, and even the political, affairs of that great Oriental State, just now awakening to a consciousness of its power and of its obligations to its people. The conditions include not only the pledging of particular taxes, some of them antiquated and burdensome, to secure the loan but also the administration of those taxes by foreign agents. The responsibility on the part of our Government implied in the encouragement of a loan thus secured and administered is plain enough and is obnoxious to the principles upon which the Government of our people rests.

The Government of the United States is not only willing but earnestly desirous, of aiding the great Chinese people in every way that is consistent with their untrammeled development and its own immemorial principles. The awakening of the people of China to a consciousness of their responsibilities under free Government is the most significant, if not the most momentous, event of our generation. With this movement and aspiration the American people are in profound sympathy. They certainly wish to participate and participate very generously in the opening to the Chinese and to the use of the world of the almost untouched and perhaps unrivaled resources of China.

The Government of the United States is earnestly desirous of promoting the most extended and intimate trade relationship between this country and the Chinese Republic. The present Administration will urge and support the legislative measures necessary to give American merchants, manufacturers, contractors and engineers the banking and other financial facilities which they now lack and without which they are at a serious disadvantage as compared with their industrial and commercial rivals. This is its duty. This is the main material interest of its citizens in the development of China. Our interests are those of the Open Door—a door of friendship and mutual advantage. This is the only door we care to enter.

With the outbreak of the Great War German banking interests ceased to figure in the consortium; and, since the downfall of the Czar's government, Russian interests have also played no part. This left in the consortium only the British, French and Japanese interests. The attempt upon the part of the United States to establish a new consortium will be described later on in this chapter.

The Reorganization Loan of 1913. Early in 1912 the new Republican Government, through its representative Tang Shao-Yi, approached the Consortium with a view to obtaining a loan of £60,000,000 for the reorganization

of China's demoralized administrative services. This project was sympathetically received by the Consortium, and, pending a definite and final agreement as to the terms upon which the loan should be issued, an advance of taels 2,000,000 was made to meet the urgent needs of the Republican Government, then at Nanking. The final agreement with the five national banking interests—America having withdrawn, as has been said—was signed on April 26, 1913.[20] The significant provisions of this important loan agreement were as follows:

The loan was to be £25,000,000 and to be entitled "The Chinese Government Five Per Cent. Reorganization Gold Loan."

The net proceeds were to be used solely for the following purposes:

(*a*) Payment of indemnities due by the Chinese Government—a list of these being appended to the agreement.

(*b*) Redemption in full of outstanding provincial loans—a list of these being appended to the agreement.

(*c*) Payment at due date of certain other shortly maturing liabilities of the Chinese Government as shown in an appended list, including provision for foreign claims for damages and losses arising out of the Revolution.

(*d*) Disbandment of troops as detailed in an annex to the agreement.

(*e*) Current expenses of administration as estimated in an annex to the agreement.

(*f*) Reorganization of the Salt Administration, as set forth in an annex.

[20] MacMurray, No. 1913/5.

(*g*) Such other administrative purposes as might be mutually agreed upon between the banks and the Chinese Government.

The entire loan was made a direct liability of the Chinese Government, and was secured as to both principal and interest, "by a charge upon the entire revenues of the Salt Administration of China" subject to previous charges thereon. There was also the provision that if, at any future time, the revenues of the Maritime Customs should exceed the amounts necessary to provide the charges upon them, the surplus should be applied in the first instance to the security and service of the Reorganization Loan, the surplus of the salt revenue being thereby *pro tanto* increased and made available for the general purposes of the Chinese Government.

The Chinese Government undertook "to take immedate steps for the reorganization with the assistance of foreigners of the system of collection of the salt revenues of China assigned as security for this loan, according to a general plan which the loan agreement outlined. This included the establishment at Peking of a Central Salt Administration, under the control of the Minister of Finance, but administered by a Chinese chief inspector, who was to constitute the chief authority for the superintendence of the issue of licenses and the compilation of reports and returns of revenue. Revenues from salt dues were to be lodged with the banks or with depositors approved by them and placed to the Chinese Government Salt Revenue Account, which account was not to be drawn upon except under the joint signatures of the Chief Inspectors, whose duty, it was declared, should be to protect the priority of the several obligations secured

upon the salt revenues. Unless and until there should be default in the payments called for by the loan, the Salt Administration was not to be interfered with, but if default occurred the administration was to be forthwith incorporated with the Maritime Customs and administered for the benefit of the bondholders representing the Reorganization Loan. By regulations issued for the administration of the salt revenue,[21] the foreign Associate Chief Inspector was designated as "Advisor of the Central Salt Administration," and his duties and authority defined.

The term of the loan was fixed at forty-seven years, repayments to begin, however, with the eleventh year according to a sinking fund arrangement. The issue price of the loan was to be in London not less than 90%, and to secure to China a net price of not less than 84%.

By Article XVII the following option upon future loans was given to the Consortium:

> In the event of the Chinese Government desiring to issue further loans secured upon the revenues of the Salt Administration or to issue supplementary loans for purposes of the nature of those specified in Article II of this Agreement, the Chinese Government will give to the [signatory] Banks the option of undertaking such loans on a commission basis of six per cent. (6%) of the nominal value of the bonds as provided for in Article XIII of this Agreement.[22]

[21] For text of these, see MacMurray, note to No. 1913/5. The very valuable work of Sir Richard Dane in connection with the re-organization and administration of the Salt Gabelle should be noted.

[22] With reference to this Reorganization Loan it is to be noted that according to its conditions a very considerable part of its proceeds did not actually become available for expenditure by the Chinese Government, being devoted to the payment of Provincial Loans, shortly maturing obligations of the Central Government, previous advances by the banks, etc., as detailed in the Annexes to the Agreement.

The first instalment paid under the Reorganization Loan agreement amounted to £25,000,000, and this is the amount now outstanding.

Japanese Advances on Reorganization Loan. In 1917 and 1918 the Yokohama Specie Bank advanced a total of yen 30,000,000, in three instalments to the Chinese Government, which advances are sometimes spoken of as the Second Reorganization Loan. They are secured on revenues of the Salt Administration, and are to be redeemed out of a second Reorganization Loan by the Consortium if, and when, made. Otherwise, the loans are to be deemed Japanese loans.[23]

Belgian Loan of 1912. While the reorganization Loan of 1913 was being negotiated with the Four Power Banks[24] the Chinese Government obtained a loan[25] of £1,000,000 from the Banque Sino-Belge, which bank was given an option for further loans amounting in all to £10,000,000. Back of the signatory bank was a syndicate composed of Russian, French, Belgian and British interests. The loan was declared to be " for the payment of such expenses as will be deemed necessary to consolidate the central and local governments, to assure the satisfac-

It may also be observed that the signing of this Agreement by the Government of Yuan Shih-Kai, without the approval of the Parliament then sitting at Peking, caused vehement protests upon the part of those Republican leaders who were opposed to Yuan and fearful of the means thus placed at his disposal for consolidating his power. It will be remembered that it was very shortly after this that there broke out in the South the short-lived so-called Second Revolution against Yuan.

[23] MacMurray, Nos. 1917/8 and 1918/1.

[24] Russia and Japan at that time had not been admitted to the Consortium, and America had not then withdrawn.

[25] For the text of this loan contract, see MacMurray, No. 1912/4.

tory administration of the State and province and/or to relieve the distress prevailing among the people and in commercial circles." The loan was declared to be a direct obligation of the Central Chinese Government and as security were pledged the net income and property of the Peking-Kalgan Railway.

This loan agreement, which was signed March 14, 1912, was regarded by the Consortium as in violation of the undertaking which Tang Shao-Yi, the representative of the Chinese Government, had made with it, and a protest against carrying out the agreement was filed on March 15.

It is not necessary here to discuss the questions of good faith thus raised, but it may be said that in result the agreement was cancelled by the Chinese government except as to £250,000 that had already been advanced.

Austrian Loans of 1912. Hard pressed as it was for funds, the Chinese Republic early in 1913 contracted three loans of £2,000,000 and £1,200,000 and £500,000, respectively, from a group of Austrian interests, and also three loans from the firm of Arnhold Karberg & Co. representing Austrian and German financial interests.[26] These loans, nominally to obtain war material, were actually for the purpose of obtaining funds for current expenses of the Government and to be spent at its discretion.

Loans made in 1914 from the Hongkong and Shanghai Banking Corporation, the Chartered Bank of India (British) and Arnhold, Karberg & Co. (Austrian), aggregating £6,635,000, have been redeemed and therefore need not be further considered.

[26] For summaries of the provisions of these loans, see MacMurray, No. 1913/4.

Lee, Higginson (American) Loan of 1916. By an agreement dated April 7, 1916, the American banking firm of Lee, Higginson & Co., of Boston, Massachusetts, contracted a loan to the Chinese Government of $5,000,000, payable in April, 1919.[27] The loan was floated in the form of three-year Chinese treasury gold notes, which notes have now been all redeemed.

Chicago Bank Loan. By an agreement dated November 16, 1916,[28] the Continental Trust and Savings Bank of Chicago, Illinois, contracted to loan to the Government of China $5,000,000 which the Government declared was needed "for industrial purposes including the internal development of China, the strengthening of the reserves of the Bank of China and the Bank of Communications (both of which are official banks) and other similar purposes." The loan was thus placed outside of the scope of the option held by the member banks of the Consortium.

As security for the loan the Chinese Government pledged "the entire revenues derived and to be derived by the Chinese Government from the Tobacco and Wine Public Sales Tax," this security being declared to be "free from any other loan, pledge, lien, charge or mortgage whatsoever."

By a supplementary agreement, dated May 14, 1917, it was provided that whereas certain claims had been made by other parties that they had a prior lien on the Tobacco and Wine Public Sales Tax, the Chinese Government,

[27] Text in MacMurray, No. 1916/4.

[28] Texts of loan contract and supplementary agreement in MacMurray, No. 1916/13.

without admitting or passing upon the validity of such claim, agreed that the loan of the Chicago bank should be further secured by a direct charge on "the Goods tax receipts from the Provinces of Honan, Anhui, Fukien, and Shensi, whether such receipts be in the nature of Likin taxes, transportation taxes or other taxes or imposts of like nature." As long as the loan should remain unpaid, these taxes were to remain in force and not be diminished or repealed or released without the consent of the bank. Furthermore, the taxes were to be collected by officials directly commissioned by the Peking Government and to be deposited, when collected, in depositaries selected by that Government and subject only to its orders.

The agreement of November 16, 1916, gave to the bank an option to provide the money in case the Chinese Government should thereafter determine to borrow in the United States additional sums up to $25,000,000; this option to endure for sixty days after information should be given to the bank by the Chinese Government that a loan was desired. The $5,000,000 originally advanced has been repaid from proceeds of a loan contract dated October 11, 1919.

Japanese Loans of 1917-1919. During these three years Japanese banking interests made numerous loans to the Chinese Government for various purposes which it is not feasible to describe here because in a considerable number of instances the terms of the loans have not been made public. The proceeds of many of these loans, ostensibly made for industrial purposes—railway building, mining exploitation, forestry, etc.—were spent by the

Peking Government to carry on the military contest it was waging with the Southern Provinces. The fact that the loans, or many of them, had the approval of the Japanese Government was shown by the publication of an official report in which was described the manner in which the Government had given to the banks additional powers in order that they might float the loans.

There was a very general feeling, not only in China but in foreign capitals as well, that it was unfortunate for China, if not for those in political power in Peking, that these loans should have been made without control as to the way in which their proceeds should be spent—that China was getting no real benefit from them and, indeed often injury, since they supplied the means whereby the devastating civil strife in the country was maintained. Yielding to this opinion, the Foreign Office of the Japanese Government in December, 1918, published the following statement:

In view of the far-reaching effect investments of Japanese capitalists in China and Siberia are likely to have on the diplomatic, financial and economic interests of the country, the Government has laid down the following line of policy to be pursued in the matter of investments:—

1. In case Japanese capitalists desire to open negotiations in future for the conclusion of loans or similar matters which may include the financing of the administrative expenditure of either the Central or local authorities in China and Siberia, they must first notify the Foreign Office or the Japanese Embassies, Legations or Consulates abroad of the fact without fail, so as to receive necessary directions. They are also called upon to report on the progress of such negotiations from time to time. When such a notification is received the Foreign Office will confer without delay with the Finance and other Departments concerned and give necessary directions to the applicant.

2. The Government may withhold its protection from capitalists who carry on negotiations without awaiting the instructions of the Foreign Office or contrary to the directions given.

3. Such directions may sometimes be given to the applicants by the Finance or other Departments direct when the step is deemed expedient in view of the nature of the transactions involved and the stage of the negotiations reached.

The Proposed New Consortium. In June, 1918, the United States Government proposed to the Governments of Great Britain, France and Japan that a new Consortium be established to finance all future loans to China, industrial as well as administrative or political, and backed by a governmental guarantee, this Consortium to be composed of national groups of banks of the four participating Powers. In principle this plan has been accepted by the four governments, but for reasons which will presently be mentioned, the plan has not yet been put into effect.

As outlined in a memorandum presented by the American Minister at Peking in July, 1919, to the Chinese Government, and based upon resolutions adopted at a meeting of bankers of the four Powers at Paris in May of that year, the scheme is as follows:

Each government is to form a national banking group according to its own judgment as to what financial interests should be admitted, and upon what terms. As for America itself, however, the Government proposed that the banks to be admitted should be representative of the whole country and thus to include not only those institutions which already had interests in China, but such other banks as might desire to join. Thirty-one such banks, from different parts of the United States, it was said,

had signified their wish and intention to participate as members of the American Group. The memorandum ran:

> It was considered by all to be a reasonable condition of membership in the American Group that all preferences and options for loans to China held by any members of this Group should be shared by the American Group as a whole and that all future loans to China which have any governmental guarantee should be conducted in common as group business, whether it was for administrative or for industrial purposes.

The hope was expressed that the other three governments would form their groups upon similar terms. This being done, the memorandum continued, " if each of the four national groups should share with the other national groups any loans to China, including those to which that national group may have a preference, or on which it may have an option, and all such business arising in the future, it is felt that the best interests of China would be served."

Replying, under date of October 8, 1918, to certain inquiries that had been made by the other governments, the Government of the United States said that the plan proposed did not necessarily contemplate the dissolution of the old Consortium, but that it was hoped that the other governments would form their respective national groups upon such a comprehensive basis as to include not only all the members of the old Consortium, but also other banking interests, not so associated, who had made or might in the future desire to make loans to China. " Nor," it was declared, " did the American Government in making its proposal, have any specified loan in mind, but was endeavoring to lay down some general rule for

future activities which might, in a broad way, meet the financial needs and opportunities in China. It was for this reason that no specific reference was made to the amount of the loan or loans to be raised, the revenues to be pledged or to the precise objects of the proposed loan. It was contemplated that these questions would be determined in respect to each case as it might arise. The reference to a relinquishment by the members of the group either to China or the group, of any options to make loans which they now hold applied primarily to the American group alone and to an agreement between the [American] banks and the United States. Thereby all preferences and options for future loans in China, having any governmental guarantee, held by the individual members of the American group, should be relinquished to the group, which should, in turn, share them with the international group."

"Such relinquishment of options," the memorandum of October 8, went on to say, "was considered by this [American] Government to be a reasonable condition of membership in the American group, and while it recognized that each interested government must necessarily make its own arrangement with its own national group, it is submitted that it is possible properly to conduct the business of the international group only by similar relinquishment to the respective national groups by the individual banks forming those groups, without distinction as to the nature of the options held."

The proposal that industrial as well as administrative loans be included within the scope of the new Consortium activities, it was declared, was based upon the reason that, in practice, it was often not easy to draw the line

of distinction between the two. "Both alike should be removed from the sphere of unsound speculation and of destructive competition."

In its communication to the other Powers the American Government had made reference to loans which "sought to impair the political control of China or lessen the sovereign rights of the Republic [of China]." This expression, it was explained, "had reference only to future activities of the American group, and was not intended to call in question the propriety of any specific arrangement in operation between the former Consortium and the Chinese Government, or between any other government and the Chinese." "It can be definitely stated," the memorandum of October 8 declared, "that the United States Government did not mean to imply that foreign control of the collection of revenues, or other specific security pledged by mutual consent, would necessarily be objectionable, nor would the appointment under the terms of some specific loan of a foreign advisor, as for instance, to supervise the introduction of currency reform."

Finally, it was declared that the Russian and Belgian group were, for the present, not included in the plan, merely upon practical grounds arising out of existing conditions of fact. The inclusion in the Consortium of these and other national groups would be a matter for future consideration when a desire for admittance might be expressed by them and when they might be in a position effectively to co-operate.

As has been said, the three Governments of Great Britain, France, and Japan gave their approval in principle to this general plan advanced by the American Gov-

ernment, but, when, four months later, a representative of one of the leading American banks visited Japan he was greatly surprised to find that the Japanese Government had not taken even the initial step of making known to its bankers that such a plan had been proposed by the American Government. And it soon developed that the Japanese Government was unwilling to co-operate in the plan unless loans relating to South Manchuria and Eastern Inner Mongolia should be wholly excluded from its scope.

This position implied a claim on the part of Japan of a "special interest" in the areas mentioned that carried with it a monopoly of rights of economic and political exploitation—a construction which the American Government was not willing to accept.[29]

After discussions extending over some months, the other Powers gained the impression that Japan would be satisfied if she were permitted to enumerate the interests already held by her in Manchuria and Mongolia which, it should be specifically declared, were not to be prejudicially disturbed without her consent by the operations of the new Consortium; but when, at length, Japan made known the conditions under which she would enter, it was found that again was presented the condition that certain areas in Manchuria and Mongolia should be declared to fall outside the jurisdiction of the Consortium.

[29] It would appear that Viscount Uchida, Minister of Foreign Affairs, was willing that Japan should give unconditional adherence to the plan, but that he could not carry with him his Cabinet, the majority of which were controlled by the opinion of General Tanaka, Minister of War, and of some of the so-called "Diplomatic Council." See *The Japan Advertiser*, August 16, 1919.

In reports of the negotiations published in the *New York Times* of November 23 and November 30, 1919, and which bear all the earmarks of accuracy, the following statements occur:

In the report under date of November 23, it is said:

There is no intention upon the part of the United States Government to encroach upon the vested interests of Japan in Manchuria, according to an authoritative statement made today. In taking its position against the exclusion of Southern Manchuria and Eastern Inner Mongolia from the scope of the international consortium for financing China the State Department assumes that the Japanese Government has misapprehended the purposes of the consortium.

The department maintains that its position is clearly indicated when consideration is given to the wording of the inter-group agreement of May 12, which in Article X specified that only those industrial undertakings are to be pooled on which substantial progress has not been made. This wording, in the opinion of the department, plainly includes those enterprises which are already developed and thus constitute vested proprietary interests, such as the Southern Manchuria and Supingkai-Chengchiatun Railways, the Fushun Colliery, etc., and may be interpreted to include the existing options for the extensions of railways already in operation, such as the proposed continuation to Taonan of the Supingkai-Chengchiatun Railway and to Hueining (Hoiryong) of the Kirin-Changchun Railway.

The State Department maintains further that if Japan's reservation is urged solely with a view to the protection of existing rights and interests it would seem that all legitimate interests would be conserved if only it were made indisputably clear that there was no intention on the part of the consortium to encroach upon established industrial enterprises or to compel the pooling of existing Japanese options for their continuation. The State Department feels, further, that the Japanese Government should be amply content with the understanding that certain specific enterprises are exempt.

The department, in its negotiations with the British Government, says it will not accept a geographical reservation which could not fail to lend itself to implications foreign to the purposes of the consortium. It states also that, in view of the fundamental identity of purposes and methods which had characterized the co-operation of the United States and Great Britain in China, and Siberia, the United States Government looks confidently to Great Britain to exert a reassuring influence upon its ally, Japan, and to convince the Japanese Government that it may find it possible to authorize its banking group to enter the proposed consortium with full assurance that no legitimate Japanese rights or interests will thereby be endangered.

On such a basis, the State Department declares, the United States would be happy to co-operate in arranging for an immediate advance to China for the purpose and on substantially the conditions suggested by the British Government, these conditions embracing the disbandment of the Chinese troops raised under the War Participation Bureau; the disbandment of forces now being employed against Outer Mongolia, which China is seeking to recover from Russia; the disbursement of such of the perpetual [sic] loan as is applicable to the discharge of troops, to be carried out under the supervision of military representatives of participating Governments; the disposal of the balance of the loan to be under strict supervision of the participating Governments under arrangements similar to those made in connection with the reorganization loan, and, finally, a solution of the disputes between North and South China.

Under date of November 30, the *Times* says:

In the construction that has been given by this Government to the British Government, it is contended that any claim that may be set up to the effect that the recognition of special interests by the United States in the Lansing-Ishii agreement was intended to imply a monopoly or a priority of economic or industrial rights is negatived by the concluding paragraphs of the agreement which explicitly and without limitation, the State Department maintains, preserve the principle of equality of commercial and industrial opportunity.

This construction of the agreement has been given as a result of Japan's action in contending for a reservation of her asserted rights in South Manchuria and Eastern Inner Mongolia, and by an inquiry from the British Foreign Office as to whether the reservation affecting South Manchuria would be accepted by the United States Government.

It is understood that in its note the State Department declared that this reassertion of the "open door" was understood to imply no restriction in the particular case of Manchuria and that this is made plain by the fact that the agreement assumed the existence of earlier treaty arrangements on the subject, one of the most concrete of which is declared to be the Portsmouth treaty of peace between Japan and Russia, by which the contracting parties declared that they had not in Manchuria any "territorial advantages or preferential or exclusive concessions in impairment of Chinese sovereignty or inconsistent with the principle of equal opportunity," and engaged "not to obstruct any general measures common to all countries which China may take for the development of the commerce and industry of Manchuria."

In connection with the formation of the Old Consortium for the Chinese currency loan in 1912, the State Department points out, the Japanese and Russian groups, having made reservations regarding non-application of restrictions upon their independent action in Northern China, Manchuria and Mongolia maintained the right to withdraw from participation in any such business which their respective Governments might consider "contrary to the interests of Russia or Japan."

Even the position sought to be established at that time by the Japanese and Russian groups, the department contends, did not contemplate any such exclusive rights as is now claimed by the Japanese Government, but confined itself to a right to protest against undertakings deemed positively harmful to the national interests of the two countries.

In May, 1915, furthermore, the department's communication continues, during the negotiations between Japan and China, which led to the so-called agreements of May 25, involving certain special political and economic advantages in favor of Japan in Manchuria

and Mongolia, the United States Government found it necessary to advise both interested Governments that "it cannot recognize any agreement or undertaking which has been entered into, or which may be entered into, between the Governments of China and Japan impairing the treaty rights of the United States and its citizens in China, the political or territorial integrity of the Republic of China, or the international policy relative to China commonly known as the open-door policy."

The reservation thus made in behalf of the United States Government, the communication asserts, has never been withdrawn and must be regarded as a part of the *res gestae* to be considered in construing the position of the United States in reference to the question now at issue.

The Department asserts that it finds itself, therefore, unable to concur in the suggestion that a solution of the deadlock in the consortium negotiations, occasioned by Japan's insistence upon reservations, might be found in accepting the Japanese reservation regarding South Manchuria. It adds that if the adoption of the consortium were to carry with it the recognition of a doctrine of spheres of interest more advanced and far-reaching than was ever applied to Chinese territory even when the dissolution of the Chinese Empire seemed imminent, it would be a calamity.

The telegram to the British Foreign Office concluded by saying it was to be doubted whether the Japanese Government would find it feasible to persist in its present pretensions or to maintain a policy of financial rivalry if confronted with the alternative of co-operation or competition with those whose desire is to relieve the Chinese situation without taking advantage of it to seek special benefits, and that the attitude hitherto taken by the Japanese bankers seemed clearly to indicate their appreciation of the impracticability of separate action. Ambassador Davis at London, was instructed to urge upon the British Government the particular importance attached by the United States to this question.

Other Loans. The most important of the long term loans of the Chinese Imperial Government, which have not been already described, are the following:

Anglo-Chinese Loan of 1914. This loan, amounting to £375,000, was obtained from the British and Chinese Corporation under agreement of February 14, 1914.[30] It is secured by a lien upon the surplus revenues of the Peking-Mukden Railway, and was obtained to repay the Japanese firm of Okura & Co. a loan secured by a mortgage upon the Shanghai-Fengching Railway.

Industrial Loan of 1913. This loan, obtained from the Banque Industrielle de Chine, under agreement of October 9, 1913, was for 150,000,000 francs, but only 100,000,000 francs have been advanced. Its purpose was the improvement of the port of Pukow, the establishment of national industries and the construction of national public works. As security these national industries and public works were pledged, and if these should prove inadequate there were pledged the revenues from "all the municipal taxes of Peking which are now or may hereafter be levied, such as land tax, tax upon carriages and rickshaws, taxes upon water, gas, electricity"; also the revenues "from the imposts upon alcohol, which are now or may hereafter be imposed by the Central Government in all the provinces of the territory of the Chinese Republic situated to the north of the Yangtze River."[31]

Banque Industrielle Loan of 1914. At the time that negotiations were being had with the Consortium for the Reorganization Loan, the Chinese Government also succeeded in obtaining an agreement,[32] signed January 21,

[30] MacMurray, No. 1908/3.

[31] As to these additional guarantees, see Annexes to the original agreement, dated March 2, 1914, MacMurray, No. 1913/10.

[32] For text, see MacMurray, No. 1914/2.

1914, with the Banque Industrielle de Chine [33] for a loan of 600,000,000 francs, bearing interest at 5%. Nominally, the proceeds were to be used for railway construction and the equipment of the port of Yamchow. In fact, however, there was not sufficient control provided to prevent the Chinese Government from using the funds thus to be obtained for current administrative expenses. As security were assigned the immovable property and railway stock and revenues of the Yamchow-Yunnanfu-Suifu-Chunking Railways, and the materials and appurtenances of the port of Yamchow.

As yet construction has not been begun upon the railways provided for under this agreement and MacMurray reports (in a note to his No. 1914/2) that it is understood that the loan has not been issued, although advances to the amount of 32,115,000 francs have been made to the Chinese Government.

Kirin Mining and Forest Loan. This loan made by a Japanese banking group composed of the Exchange Bank of China, the Industrial Bank of Japan, the Bank of Taiwan and the Bank of Chosen, under agreement of August 2, 1918,[34] was for yen 30,000,000, its ostensible purpose being the development of gold mining and forestry in the two Manchurian provinces of Heilungkiang and Kirin. As security were pledged the Government's revenues from the gold mines and national forests. In case China should, during the operation of the loan, wish to make other loans in respect to the mines, national

[33] A French corporation which had back of it the Peking Syndicate, a British Corporation whose shares, however, were largely held in France.

[34] For translation of this loan agreement, see MacMurray, No. 1918/11.

forests and their revenues or to dispose of them, the banks were first to be consulted.

By notes attached to the loan agreement it was provided that "for the purposes of enabling the gold mining and forestry offices to attain their object, and assuring a source from which to secure funds required for the redemption of the loan, Japanese experts shall be engaged to assist in and perform the business of the two offices."

Of this loan, the total amount, yen 30,000,000, is outstanding.

War Participation Loan. By an agreement of September 28, 1918, with a Japanese banking group,[35] a loan of yen 20,000,000 was obtained by the Chinese Government, the preamble of the loan agreement reading as follows:

> In accordance with the Sino-Japanese military cooperation agreement, the Chinese Government . . . in view of the need of securing funds for organizing a defensive army so as to be able to fulfil its cooperative duties, and also because of the expenses in participating in the war, has entered into a loan contract with the Bank of Chosen, the Industrial Bank of Japan, and the Bank of Taiwan.

No security beyond Chinese Government treasury certificates was exacted or given in the body of the agreement, but in a note of even date the Chinese Minister at Tokyo, in behalf of his Government, promised "that the tax system in China shall be reformed in the future and the revenues therefrom shall be reserved as the sources for the fund for the redemption of the loan."

Upon this same date, September 28, 1918, were signed

[35] For translation of this agreement, see MacMurray, No. 1918/14.

the preliminary agreement granting to Japan the right to construct four additional railways in Manchuria, and the agreement with reference to the Tsinanfu-Shuntefu and Kaomi-Hsuchow extensions of the Shantung Railways.

Telegraph Loan of 1918. By an agreement of April 30, 1918,[36] the Japanese syndicate of banks agreed to loan to the Chinese Government yen 20,000,000, the term to be five years, and the security to be "all the property and revenue of the telegraph lines throughout the Republic of China." In case future foreign loans in connection with the telegraph lines should be desired by China the Japanese banks were first to be consulted.

Plague Prevention Loan. In 1918, by an agreement signed January 18,[37] with the Banque de l'Indo-Chine, Hongkong and Shanghai Banking Corporation, Russo-Asiatic Bank, and the Yokohama Specie Bank, China borrowed $1,000,000 for expenses in connection with the combatting of the spread of the plague which had broken out in the north. This loan has since been repaid.

Other Loans. The loans which have been described in the foregoing pages by no means sum up the extent of China's foreign debts. Supplementing them are many loans which have been made for special purposes, and also a great number of short term debts. And, of course, in addition are the many railway loans the more important of which will be mentioned in the next following chapter.[38]

[36] MacMurray, No. 1918/7. [37] MacMurray, No. 1918/2.

[38] The *Far Eastern Review* for August, 1919, gives detailed lists of outstanding Short Term and Domestic Loans.

CHAPTER XX

Railway Loans and Foreign Control

Introductory. In an earlier chapter in which was traced the development of Spheres of Interest in China, an account was given of the circumstances under which the more important agreements with reference to the construction and operation of railways were entered into with the different Powers or with their respective financial groups. In the present chapter it is proposed to consider in a more systematic and more chronological manner the development of railway enterprises in China, but with especial reference to the extent to which the foreign banks or syndicates of banks, which have made railway loans, have retained for themselves control over the construction and operation of the railway lines concerned.

As regards "control" it will be found that this extends, or has extended, to the following matters: the supervision of construction; the purchase of material for construction, rolling stock and other operating equipment; the audit or other supervision of expenditures, and receipts; and the actual operation of the roads.[1]

[1] Speaking of the control provided for in the railway "concessions," Mr. Kent, writing in 1907 (*Railway Enterprise in China*, p. 24) says:

"In this connection the convenient term concession has been very generally, and perhaps somewhat loosely, applied. When we come to analyse them we find that primarily these arrangements are in the nature of underwriting contracts. The contracting syndicate undertakes to provide 90 per cent., for example, of a loan of so many millions of pounds or

With regard to the purposes aimed at, a distinction is to be made between the control which is provided in order that security may exist for the repayment of the loans and their charges; and the control of the operation of the line for strategical or other political purposes. As examples of this latter class may be instanced the Russian and Japanese lines in Manchuria, the German line in Shantung from Tsingtao to Tsinanfu, and the French system in Yunnan and Kwangsi.[2]

These lines owed their origin to concessions based upon treaties with the Powers concerned, and are, at the

dollars, as the case may be, repayable at a certain specified time and bearing interest at the rate of 5 per cent. per annum; it takes its chance of being able to float the loan upon the public at a higher percentage of its nominal value. What has happened in most cases is that on every 100 bond, for example, issued by the Chinese Government the latter have received 90, while the syndicate have succeeded in getting them taken up at 97 or thereabouts, thus securing a respectable margin on the transaction. But under the recently concluded agreement in connection with the Canton-Kowloon Railway the Chinese Government have secured far more favourable terms.

"This is one aspect of the contract. There appear to be three others.

Firstly, the syndicate is given the right to construct the line, and in return for its trouble in this connection it is in most cases allowed a sum equivalent to 5 per cent. on the total cost. It is this right which presumably gives rise to the idea of concession.

Secondly, on completion of the line it is placed in some cases under a theoretically joint Chinese and foreign control, in which in practice the foreign element predominates. In other cases the Chinese have merely a consultative voice.

Thirdly and lastly, at this stage, or rather from the time of the issue of the loan, the syndicate becomes trustees for the bondholders, and it is easy to see that, in the nature of things, the loan being secured by a first mortgage upon the railway, the position of the syndicate for all practical purposes must be that of mortgagees in possession.

Such are the underlying principles of the agreements which confer these rights, which for want of a more precise term we call, and shall continue to call, concessions. The details, of course, vary."

[2] The British line from Burma into Yunnan and Szechuan, when built, will fall within this class. As yet it has been only surveyed.

present time, actually, if not nominally, the public property of those Powers. The conditions under which they were built have already been sufficiently stated and, therefore, need not be rehearsed in this place.[3]

Shanghai-Woosung Railway. The first attempt to build and operate a steam railway in China was in 1876, when, under permission to a foreign concern to construct an "improved road" a line of rails was laid from Shanghai to Woosung. After being in operation but a few weeks, the local Taotai insisted upon buying out the company, after which he had the track torn up, the station at Shanghai destroyed, and the rolling stock sent out of the country.[4]

Peking-Mukden Line. The next line to be started was one which, though unambitious in its scope, became ultimately a part of the important line from Peking to Mukden.

In 1877 permission was obtained by the Chinese Engineering and Mining Company to build a railway from its mines at Kaiping to a canal at Hsukuchuang, a distance of six miles. It had not been the intention of the Government that the cars should be drawn by steam, but in fact the engineer in charge managed to construct and operate a steam locomotive which received the name "The Rocket of China." The use of this engine was acquiesced in, and in 1886 permission was obtained to extend the line southward to Tientsin, which extension was com-

[3] They are nominally the property of, and operated by, specially chartered corporations.

[4] The proximate cause of this action was the killing of a Chinese on the track.

pleted in 1889. In 1891 the further extension of this line northward to Shanhaikuan was authorized. A few years later the ownership of the road was acquired by the Imperial Government and its operation placed in the hands of the Chinese Imperial Railways Administration.

In 1894 the line was again extended from Tientsin to Peking.[5]

After the Sino-Japanese War a loan of £2,300,000 (16,000,000 taels) was obtained from the British banks for extending the line to Mukden, the loan agreement bearing date of October 10, 1898.[6]

The conditions of this, one of the first of China's railway loans, need to be summarized, as they show the character of the "control" provided for, and also furnished a model for a number of later loans.

The loan was made "a first charge upon the security of the permanent way, rolling stock, and entire property, with the freight and earnings of the existing lines between Peking and Shanhaikuan, and on the freights and earnings of the new lines when constructed." Undertaking was given by the Chinese Government that the roads, buildings, rolling stock, etc., would be kept in good condition. If the construction of branch lines or extensions connecting with the lines concerned should be later proposed, the British and Chinese Corporation was to be applied to for loans if foreign capital was needed.

[5] To Fengtai a short distance from Peking.

[6] The lending party was the British and Chinese Corporation, which was a syndicate formed by the Hongkong and Shanghai Banking Corporation and Jardine Matheson & Co. In terms the loan was "for the construction of a railway line from Chung-hou-so to Hsin-ming-ting and a branch line to Ying-tzu, and for the redemption of existing loan made to the Tientsin-Shanhaikuan and Tientsin-Lukouchiao Railway lines." For text of loan agreement, see MacMurray, No. 1898/20.

The principal and interest of the loan was further declared to be a direct obligation of the Imperial Government of China. In case of default, the railways were to be handed over to the Corporation to be managed by its representatives until the loan and interest charges were paid in full.

No further loan was to be charged upon the security named, until the loan was redeemed, nor were the roads to be parted with by the Chinese Government.

During the currency of the loan, the Chief Engineer of the road was to be a British subject; and the principal members of the railway staff to be capable and experienced Europeans, appointed by the Chinese Administrator-General of the railways, and subject to dismissal by him for misconduct or incompetency after consultation with the Chief Engineer. If Chinese with sufficient engineering or traffic experience could be found they were to be appointed as well as Europeans.

A capable and efficient European railway accountant was to be appointed "with full powers to organize and direct the keeping of the railway accounts, and to act with the Administrator-General and the Chief Engineer of the railway in the supervision of receipts and expenditures." Details were added as to the manner in which revenues were to be handled and disbursements made.[7]

[7] Commenting upon this agreement, Mr. Rea, in the *Far Eastern Review*, November, 1909, said:

"China voluntarily admitted the principle that her officials were incompetent to honestly administer the proceeds of a foreign loan to the satisfaction of the investor. And having once placed her financial probity in question, she has been forced through successive similar agreements to follow a practice which no other nation in the world tolerates for an instant. . . . In short, while China could give ample security and pay good interest, she could not be entrusted with the expenditure of the money."

During the Boxer troubles the operation of the Peking Shanhaikuan line was taken over by the British troops, and surrendered again to the Chinese Civil Administration by agreement of April 29, 1902.[8] By an "additional agreement" of the same date, the Chinese agreed that "for the better management of the railways after the British military authorities have handed them over to the Chinese Administration, in the interests of the Chinese public revenue and of the British bondholders," the following conditions regarding the future operation of the road should be observed:

The Board of Administration acting under the authority of the Administrator-General of the Northern Railways, should be composed of a managing director, a foreign director, and a British general manager, the last named "to control the work, foreign and native workmen, the inspection of materials, etc."

A representative of the British and Chinese Corporation to deliberate on important railway matters.

An English secretary and Chinese translator to be appointed to assist in the transaction of international business.

A competent European storekeeper to be appointed.

All appointments of officials and employes of the road to be subject to the approval of the board and of the Administrators-General.

The books to be audited annually by a qualified accountant not connected with the railways and selected by the representative of the British and Chinese Corporation; and results of the operations of the road to be

[8] For the texts of these agreements, see MacMurray, No. 1902/4.

published annually in the same manner as the Imperial Maritime Customs Reports.

All rolling stock, materials, etc., obtained from foreign countries for use of the railways as far as possible to be purchased by means of public tenders.

The line from the Chienmen [Gate] of Peking to Fengtai (the terminus of the Tientsin-Peking Branch) and from Peking to Tungchow, which had been constructed by the British Military Administration, to be added to form a part of the railways of North China pledged as security for the original loan of £2,300,000.

Finally, there was added the following provision with reference to future railways:

> Under clause III of the agreement of October 10, 1898, it is stipulated that the construction of branch lines or extensions shall be undertaken by the Northern Railways Administration, and the intent of this stipulation is hereby confirmed in order to secure the existing interests of the railways. It is therefore agreed that the construction of any new railway within a distance of eighty miles of any portion of the existing lines, for which concessions have not been signed previous to the date of this agreement, shall be undertaken by the Administrators-General of the Imperial Northern Railways. Such lines as the following: A northern line from Peking or Fengtai to the Great Wall; a chord line from Tungchow to Kuyeh or Tongshan; a line from Tientsin to Paotingfu; shall not, in view of the interests of the Imperial Northern Railways, be allowed to fall into other hands.

Anglo-Russian Understanding of 1898. The entrance of British financial interests into the north of China, as represented by the agreement of October 10, 1898, had aroused the apprehensions of the Russians, and, as stated earlier in this volume[9] had led to the Anglo-Russian

[9] *Ante*, p. 282.

exchange of notes of April 28, 1899, in which Great Britain had undertaken not to seek on her own account or on behalf of her nationals any railway concessions to the north of the Great Wall, that is, north of Shanhaikuan, or to obstruct, directly or indirectly, applications on the part of the Russian Government for railway concessions north of the wall. Russia reciprocally undertook not to seek railway concessions in the valley of the Yangtze or to obstruct the granting of railway concessions to British interests in that region.

The section of the line north to Hsinmintun, thirty-six miles from Mukden, was completed in 1903; the gap from Hsinmintun to Mukden was built by the Japanese during the Russo-Japanese War, and was surrendered in 1907 to the Chinese.[10]

The branch line from Kirin to Changchun, eighty-seven miles in length, was built by the Japanese and opened to traffic in 1913. Under one of the more recent treaties with Japan, this line is eventually to be transferred to Japan to be operated in connection with her South Manchuria Railway system.

Peking-Kalgan (Peking-Suiyuan) Railway. This road of 124 miles, opened in 1909, and later extended in 1915 to Fengchen, 266 miles from Fengtai (where it connects with the Peking-Mukden and Peking-Hankow lines), was built from the earnings of the Peking-Mukden line, and is the only road in China built wholly with Chinese capital and by Chinese engineers. The Chinese plan, at some future time, to extend the line to Urga and Kiakhta,

[10] By an agreement of May 27, 1907, for which see MacMurray, No. 1907/5.

750 miles from Kalgan, and thus connect with the Trans-Siberian line.

There is a short branch of sixteen and a half miles from Peking to Mentoukow, which was opened to traffic in 1908.

The Peking-Kalgan line is wholly under Chinese control and administration.

In 1918 a loan was obtained by the Chinese Government from Japanese banks.[11] The administration of the road remains in Chinese hands, but the Japanese are to have preference in the matter of future purchases of supplies.

Shanghai-Nanking Railway. The construction of this important railway was arranged for under a loan agreement of July 9, 1903, between the Chinese Government and the British and Chinese Corporation.[12] This agreement provided for a fifty-year loan not exceeding £3,250,000 to be issued by the Corporation, which was itself to have control of the building and equipment of the line. In all matters relating to the construction and administration of the railway the Corporation was, however, to give particular heed to the "opinions, habits and ideas of the Chinese people," and, when practicable, Chinese were to be employed in positions of trust and responsibility.

The loan was secured by a mortgage "upon the railway not completed between Woosung[13] and Shanghai,

[11] The banks took up the unsubscribed domestic loan of the Railway.

[12] This agreement superseded one for the building of the road which had been signed between the same parties on May 13, 1898. For the text, see MacMurray, No. 1903/2.

[13] Woosung is ten miles from Shanghai nearer the mouth of the river where vessels of deep draught are compelled to unload their cargoes intended for Shanghai.

and also on all lands, materials, rolling stock, buildings, property, and premises of every description purchased or to be purchased by the railways herein referred to, and on the last-mentioned railways themselves as and when constructed and on the revenue of all descriptions derivable therefrom." The bonds to be issued and representing the loan were to be Imperial Chinese Government bonds and therefore obligating that Government to their payment.

The Director-General was to appoint a board of five Commissioners for supervising the construction and operation of the road, two of whom were to be Chinese. The other three were to be British, including the Engineer-in-Chief, and appointed by the Corporation. The appointment, salaries and functions of all the employees of the railway, Chinese and foreigners (except the Engineer-in-Chief, who was to be nominated by the Corporation and approved by the Director-General), were to be made and fixed by this board. For the service of the railway any Chinese of official rank and competent for the work might be recommended by the board for employment, but for the important offices foreigners of ability and experience were to be selected. The board was at all times to have access to the receipts and disbursements of the road, and the Chief Accountants' department was to be composed of Chinese and foreigners. The lands needed by the road were to be purchased at a cost not to exceed £150,000. During the currency of the loan the road was not to be again mortgaged to any other party, Chinese or foreign. As remuneration for its superintendence and other services the Corporation was to receive five per cent. on the entire cost of all materials

purchased for the road. Chinese materials purchased and products of the Hanyang Iron Works were to be preferred if price and quality were suitable.

The Board of Commissioners was authorized to maintain a railway police of Chinese for the protection of the line, to be paid for by the line. These police were not to interfere with matters outside the railway.

It was agreed that after deducting from the income of the road all working and other expenses, the Corporation was to receive twenty per cent. of the net profits in the form of certificates to an amount equal to one-fifth of the cost of the line, which certificates the Chinese Administration was to have the right to redeem at their face value at the end of the fifty years' term.

Without the express consent in writing of the Director-General and the Corporation no other rival railway and no parallel line to the Shanghai-Nanking Railway was to be built " to the injury of the latter's interest within the area served by the Shanghai-Nanking line or branch lines."

The existing Shanghai-Woosung line was to be taken over, at a price agreed upon, as part of the Shanghai-Nanking system.[14]

The Shanghai-Nanking concession constituted one of the fruits of the " battle of concessions " (to use Lord Salisbury's phrase) waged in China, 1897 to 1899. An examination of its provisions shows that, to all intents and purposes, the operation as well as the construction of the road was taken out of the hands of the Chinese, and,

[14] For further elaboration of the " control " to be exercised by the Corporation, see the " Working Agreement," of April 13, 1908. MacMurray, note to No. 1903/2.

at the present time, the amount of Chinese control over this line is very small indeed. In strong contrast with the Shanghai-Nanking terms stand those of the Tientsin-Pukow line, presently to be mentioned.

Peking-Hankow Railway. American financial interests were the first to become interested in the construction of this line, which has now become the most profitable of all the Chinese lines, and a survey was made under the authority of United States Senator Washburn. When, however, it came to the matter of a contract for the construction of the line, a Belgian company, the Société d'Etudes de Chemins de Fer en Chine, representing Belgian, French and Russian financial interests, obtained the contract. This it did, however, only by offering to the Chinese terms which afterwards the company found so liberal that it had to ask of the Chinese Government that they be modified—a request which, it may be observed, was backed by diplomatic pressure.[15] The agreement, signed June 26, 1898, by the Belgian Corporation with the Chinese Railway Company, a Chinese corporation,[16] provided for a loan of 112,500,500 francs to mature in twenty years, and payments of interest and refunding of bonds to be guaranteed by the gross revenues of the Imperial Chinese Government. Also there was specially assigned, preferentially, " all the net

[15] There is ground for believing that this Franco-Belgian-Russian project was but part of an ambitious scheme under which the Russian sphere in the north would be ultimately united to the French Sphere in the South. In this connection, then, the line from Hankow to Canton was of especial significance.

[16] Preliminary contracts had been signed May 27, and July 21, 1897: for translations of the Loan Contract and Operating Contract, see MacMurray, No. 1898/13.

revenue of the line from Lukouchiao (Peking) to Hankow, after the regular payment of all expenses of administration and operation." Also there was given a prior special lien on the line itself together with stationary and rolling stock.

The construction of the entire line (not including the short section from Peking to Paotingfu) was to be under the direction of the Belgian company, which was to "make plans, surveys, estimates for the whole line, direct the execution of all the work and order the materials, machinery and furniture necessary to insure the regular operation of the line." The Chinese Director-General of the railway company was to have the right, however, to approve the building plans and contracts for supplies. With the exception of what could be supplied by the Hanyang works, all materials and supplies necessary for the construction and operation of the road were to be obtained from the Belgian company, which obligated itself to fill all orders under the best possible terms. Upon such orders the Société was to receive a commission of five per cent.

Under an operating contract of even date, the Belgian company was given the right to take over the the working of each section of the line as soon as completed; to hire and dismiss personnel; to fix salaries; and to make all purchases necessary for operating, maintaining or repairing the road; to fix rates; to collect revenues of all kinds and to pay the operating expenses—such measures being submitted "for consultative purposes" to the Chinese Director-General of the Chinese Railways. During the entire period of its operation of the line and as compensation therefor, the Belgian Company was to receive

twenty per cent. of the net profits, that is, after payment of all operating expenses and bond interest.

The line was opened to traffic in 1905.

By Article V of the Loan Agreement the Chinese Government was given the right, after September 1, 1907, to pay off the entire loan and bring the contract to an end. Taking advantage of this right the Chinese Government issued two loans, dated October 8, 1908, secured by certain provincial revenues,[17] and on January 1, 1909, took over the line, the Société's interest in it thereupon wholly terminating. A considerable number of French and Belgian employees have, however, been retained in the service and the line is still spoken of as the French Railway.

The following are branches of the Peking-Hankow main line; Liangsiang-Tuli (12 miles to coal mines); Liuliho-Choweichwang (10 miles to coal mines); Kaoyihsien to Lincheng (10 miles to coal mines;) to Paotingfu (3 miles); Kaopeitien to Hsiling (26 miles).

Chengtingfu-Taiyuanfu Railway. This road is a branch of the Peking-Hankow Railway, and was built under a loan agreement of October 15, 1902, with the Russo-Chinese Bank.[18] The construction of the road was vested in the Belgian syndicate of the Peking-Hankow line, its administration, after completion, however, being taken over by the Imperial Chinese Railway Company. The line was opened to traffic in 1907. In 1912 a loan of 250,000,000 francs was obtained from the Compagnie

[17] MacMurray, Nos. 1908/12, and 1908/13.

[18] For translations of this and of the accompanying operating contract, see MacMurray, No. 1902/8.

Générale de Chemins de Fer et de Tramways en Chine for an extension of the line westward to Lanchowfu and eastward to Haichow or Suchowfu.

Pienlo Railway. This line, 120 miles in length, crossing the Peking-Hankow Railway, runs from Kaifengfu to Loyang and was built under an agreement signed November 12, 1903,[19] with a representative of the Belgian Compagnie Générale de Chemins de Fer et de Tramways en Chine, under which a loan of 25,000,000 francs was obtained, secured by the receipts of the road and guaranteed by the Chinese Government. The conditions regarding the construction and management of the road followed those of the Peking-Hankow loan. An option was granted to the Belgian company to extend the line to Sianfu in Shensi.

Chinese Regulations of 1898 for Mines and Railways. In reaction against the inroads that foreigners were making upon its control of its own domestic affairs, the Chinese Government in the latter part of 1898 issued a set of mining and railway regulations which showed a determination upon their part to prevent in the future, if possible, a further alienation to foreigners of rights of control over the mining and railway interests of the country.

These regulations declared that the best form of managing mines and railways was by merchants and that henceforth the leading idea should be to bring this about. Mining and railway matters in the three Manchurian

[19] For translations of loan contract and operating contract, see MacMurray, No. 1903/7.

Provinces, in Shantung and at Lungchou, it was stated, should not be invoked as precedents, as those concessions had been affected with international questions. Mines and railways were declared to be essentially separate undertakings and to be treated as such.

In securing capital, the Regulations ran, every effort must be made to get the largest proportion possible of Chinese. Regardless of the way the scheme is put on the market, the lump sum needed for the undertaking must be estimated, and then must be in the first place secured, as a basis of operations, three-tenths of this amount by Chinese. Only when this has been done may foreigners be invited to buy shares or foreign money be borrowed. If there is no proportion of the capital furnished by Chinese and if there is only stock bought by foreigners or foreign capital lent, no sanction will be given.

In order to protect the sovereign rights of China, it was declared that the administrative control of all mines and railways, irrespective of the foreign shares or the amount of foreign capital involved, should remain in the hands of Chinese merchants. These provisions, like the mining regulations based on the 1903 Treaties, have not been enforced.

Canton-Kowloon Railway. This railway from Canton to Kowloon is composed of two sections: one from Kowloon to Samchun, the border of British territory, twenty-two miles in length, built by the Hongkong Government and opened to traffic in 1910; and the other from Samchun to Canton, a distance of approximately ninety miles, built by the Chinese Government with money loaned by the British and Chinese Corporation.[20]

[20] For the text of the loan contract, dated March 7, 1907, see MacMurray, No. 1907/2. The right to finance the building of this road was one of those demanded and obtained by Great Britain from China as an equivalent for

The terms under which the loan of £1,500,000 was made by the Hongkong Government to China for the building of the railway from the boundary of the Kowloon leased territory to the city of Canton need to be set forth with some degree of particularity since they provided for a distinct type of foreign control, as distinguished, for example, from those of the Tientsin-Pukow Railway loan agreement, presently to be considered.

Chinese Government bonds, maturing in thirty years, were to be issued for the full amount of the loan, with the Railway as mortgage security,[21] the proceeds to be used for the construction and equipment of the road and for paying interest on the loan during construction. In all matters relating to construction particular heed was to be paid to the opinions and habits of the Chinese people and, when practicable, Chinese were to be employed in positions of trust and responsibility. There was to be established at Canton by the Viceroy of Canton a Head Office under the direction of a Chinese Managing Director (appointed by the Viceroy) with whom was to be associated a British Engineer-in-Chief, and a British Chief Accountant, recommended by the Corporation and approved by the Viceroy.

granting to a Belgian syndicate the concession for the important line from Peking to Hankow—the Belgian syndicate being supposed to act as the agent of France and her ally Russia. A preliminary agreement for the building of the line had been signed in 1898, but nothing was done under it.

[21] "Art. 3. The loan shall be secured by mortgage declared to be now entered into in equity by virtue of this Agreement, and shall, as soon as possible hereafter, be secured by a specific and legal first mortgage in favor of the Corporation upon all lands, materials, rolling stock, buildings, property, and premises, of every description purchased or to be purchased for the Railway, and on the Railway itself, as and when constructed, and on the revenue of all description derivable therefrom."

For all important technical appointments on the Railway staff, Europeans of experience and ability were to be engaged, but should competent Chinese be available they also were to be employed. All receipts and payments were to be certified by the Chief Accountant and authorized by the Managing Director.

As remuneration for all services to be rendered by it during construction, including superintendence of the purchase of materials, the Corporation was to receive £35,000. As compensation for acting as trustees of the bondholders, the Corporation was to receive annually a further sum of £1,000.

In case there should be default upon the part of the Chinese Government in the payment of interest or the principal of the loan in accordance with the amortization scheme that was annexed to the loan agreement, it was provided that the Railway with all its appurtenances should be handed over to the Corporation to be dealt with in such a manner as to protect the interests of the bondholders.

The severity of these terms is sufficiently evident, especially when contrasted with those obtained by the Chinese Government for the building of the Tientsin-Pukow line.

Tientsin-Pukow Railway. The final agreement for the construction of this line which brought Tientsin, and therefore Peking and the north, into connection with Nanking (across the Yangtze from Pukow) and Shanghai, was the product of much discussion between British and German interests which has been somewhat considered earlier in this volume, in the chapters dealing with

the development in China of Spheres of Interest. It will, however, be worth while to say a further word regarding this conflict of British and German interests in view of the fact that from it resulted the granting to the Chinese Government of terms for railway construction more favorable than it had previously been able to obtain, and which terms it was able to use as norms for later railway loan agreements.

It will be remembered that previous to 1898 the British and German financial interests operating in China had agreed to pool all Chinese loans. This agreement was abrogated in 1898, with regard at least to railway concessions, but, by a definite understanding arrived at in London in September of that year, it had been agreed that the English "Sphere" should embrace: "The Yangtze Valley subject to the connection of the Shantung lines to the Yangtze at Chinkiang; the provinces south of the Yangtze; the Province of Shansi with connection to the Peking-Hankow line at a point south of Chengting and a connecting line to the Yangtze Valley crossing the Hoangho Valley." The German "Sphere" was to include; "The Province of Shantung and the Hoangho Valley with connection to Tientsin and Chengting, or other point of the Peking-Hankow line, in the south with connection to the Yangtze at Chingkiang or Nanking. The Hoangho Valley is understood to be subject to the connecting line to the Yangtze Valley, also belonging to the said sphere of interest."

Previously to entering into this understanding the German Minister at Peking had informed the British Minister that he had been instructed by his Government: "Should the Chinese Government decide to grant a con-

cession for the Tientsin-Chinkiang [22] Railway regardless of German claims, you are instructed to oppose such a decision, and, should it be necessary, you may inform the Chinese Government that the German Government would consider as *non avenu* any concession in that Province, and would reserve the right of making the Chinese Government responsible for any such concession in the event of its being granted by them." [23]

The first agreement relating to the construction of the Tientsin-Chinkiang (later changed to Pukow) line was entered into on May 18, 1899, between the Chinese Government and the Deutsch-Asiatische Bank, and the Hongkong and Shanghai Banking Corporation for themselves and on behalf of Jardine, Matheson and Co. as joint agents for the British and Chinese Corporation.[24] This contract, however, was not carried out at the time owing to the Boxer troubles of 1900, and the matter was not again discussed until 1906, by which time the Chinese had developed for themselves a new railway policy according to which, in the future, lines should be constructed under Chinese direction, although the funds needed might be obtained from foreign sources. In the new negotiations entered upon, the British strongly insisted that the Tientsin-Pukow terms should correspond to those embodied in the Canton-Kowloon agreement. The German interests, however, made this impossible by offering much more liberal conditions, with the final result that these terms were accepted by the

[22] Chinkiang is a point on the Yangtze near Nanking and Pukow.

[23] British Pal. Papers, "China," No. 1, 1899 (vol. cix, No. 305). Cf. Overlach, *Foreign Financial Control in China*, pp. 35-36.

[24] MacMurray, No. 1908/1, note.

British for the portion of the line which they were to finance as well as for the portion to be built under German auspices. In effect, as will be seen, the loan was to be secured by specified provincial revenues, and not by a mortgage upon the railway and its appurtenances, and the construction and control of the road was to be wholly in Chinese hands.

By the final agreement, signed January 13, 1908,[25] between the Imperial Chinese Government of the one part and the Deutsch-Asiatische Bank and the Chinese Central Railways, Ltd. representing British financial interests, of the other part (and thereafter referred to as the Syndicate) it was provided that the line from Tientsin to Pukow should be divided into two sections; the northern section from Tientsin to Hanchwang, 390 miles, to be built under German supervision; and the southern section from Hanchwang to Pukow to be built under British supervision,—the two sections after construction to be operated as a single line.

The Agreement authorized the issuance of a thirty year loan of £5,000,000, the proceeds to provide capital for the construction of a government railway from Tientsin through Techow and Tsinanfu to Ihsien near the southern frontier of Shantung to be known as the northern section; and from Ihsien to Pukow, to be known as the southern section of the Tientsin-Pukow line.

For the payment of the loan and interest charges thereon, the Chinese Government assumed responsibility and engaged, should the revenues of the proposed railway prove insufficient, to take steps to make good the deficiency. As specific security the following revenues

[25] For treaty, see MacMurray, No. 1908/1.

were pledged: (1) The likin and internal revenues of the Province of Chihli to the amount of 1,200,000 Haikuan taels a year; (2) the likin and internal revenues of the Province of Shantung to the amount of 1,600,000 Haikuan taels a year, and (3) the revenue of the Nanking likin collectórate to the amount of 900,000 Haikuan taels a year and of the Huai-an native customs in the Province of Kiangsu, to the amount of 100,000 Haikuan taels a year. These provincial revenues were declared to be free from all other loans, charges, or mortgages. These revenues were not to be interfered with, however, so long as the principal and interest of the loan were regularly paid. If it became ncessary to resort to them, they were to be transferred to and administered by the Imperial Maritime Customs in the interest of the bondholders. Until the loan should be redeemed the railway should, under no circumstances, be mortgaged or its receipts given as security to any other party. It was further provided that should the customs tariff be revised and in connection therewith the likin tax be decreased or abolished, the consent of the lending interests to such decrease or abolition should first be obtained and then only upon condition that an equivalent charge upon the increase in customs revenues were substituted.

The proceeds of the loan were to be paid to the credit of a separate account from which payments were to be made to meet construction expenditures. The accounts of the railway were to be kept in Chinese and English in accordance with accepted modern methods and supported by necessary vouchers.

The construction and control of the railway was to be entirely vested in the Imperial Chinese Government, but

for the northern section a German Chief Engineer, and for the southern section a British Engineer, acceptable to the British and German syndicate, were to be appointed. These two Engineers were to be under the orders of the Managing Director. Technical employees on the railway staff were to be appointed and dismissed by the Managing Director but in consultation with the Chief Engineers, and, in case of disagreement, the matter was to be referred to the Director-General whose decision was to be final.

"After completion of construction," the Agreement ran, " the Imperial Chinese Government will administer both sections as one undivided Government railway and will appoint an Engineer-in-Chief, who, during the period of the loan, shall be a European—without reference to the Syndicate."

For the northern section the Deutsch-Asiatische Bank was to act as the purchasing agent during the construction of the line for all goods imported from abroad; and for the southern section the Chinese Central Railways, Ltd. was to act in a similar capacity. Upon such purchases, which were to be made in the open market and upon the best possible terms, a Commission of five per cent. on the net cost was to be received, but no expenditures were to be incurred without the authorization of the Managing Director. At equal rates and qualities, goods of German and British manufacture were to be given preference over goods of other foreign countries; and Chinese goods when obtainable and of equal price and qualities were to be preferred to goods of British or German origin. No commission was to be paid on purchases of Chinese goods. After the completion of the

construction of the line the Deutsch-Asiatische Bank and the Chinese Central Railways were, within their respective sections, to be given the preference, during the currency of the loan, of agency business for the purchase of foreign materials for the railway. Also these companies were to have first option of supplying future loans, if foreign capital should be needed, to build branch lines in connection with the main line.

Under the earler preliminary agreement it had been provided that, in remuneration for their general responsibility and services, the Syndicate should receive twenty per cent. of the net profits of the railway. In commutation of this, the Syndicate, in the final agreement, consented to retain £200,000 out of the first issue of the loan.

Under these conditions for the first time in the history of foreign railway loans in China, the construction and operation of the financed line were placed wholly in Chinese hands. Furthermore, no mortgage was placed upon the line. Foreign Engineers-in-Chief were to be appointed and construction accounts were to be kept and rendered, but withdrawals from the railway credit created by the loan could not be stopped at the instance of the foreign financial interests concerned, as had been the case under earlier railway loan agreements.[26]

Shanghai-Hangchow-Ningpo Railway. Conditions similar to the "Pukow Terms" were secured by the Chinese Government by the agreement of March 6, 1908, under which the Shanghai-Hangchow-Ningpo Railway was constructed.[27]

[26] Considerable "graft" and extravagance upon the part of the Chinese resulted from the freedom from control thus permitted.

[27] This line is composed of two disconnected sections: one from Shanghai

This agreement was with the British and Chinese Corporation and provided for a thirty-year loan of £1,500,000 the purpose being declared to be the building of a line from a point connecting with the Shanghai-Nanking line at or near Shanghai, through Fengchingchen to Kahsingfu, thence to Hashu and Hangchow, and thence from Chiangkow to Ningpo, on which latter line certain work had already been locally attempted. As security for the loan were pledged the revenues of the railway together with the surplus earnings of the Imperial Railways of North China (excluding the section of the line to the east of the Liao River), and if these should prove insufficient, the Chinese Government was to provide other revenues. Similar to the Tientsin-Pukow arrangement, the construction and control of the railway was to be entirely in the Chinese Government, but with the proviso that a British Engineer-in-Chief should be appointed. In other respects also, as, for example, the purchase of materials, etc., the Pukow terms were followed.

This Shanghai-Hanchow-Ningpo line has had a considerable history: " Nationalization " by the Provinces of Kiangsu and Chekiang; mortgage in part to the Japanese firm of Okura & Co. as security for a loan of Yen 3,000,000 to the Nanking Provisional Government; the mortgage redeemed by funds obtained from the British and Chinese Corporation; and, ultimately, provincial control resumed. The scope of the present chapter does not, however, make it necessary to give this history.[28]

to Hangchow (Zahkao), 160 miles in length; and one from Ningpo to Shaoshing, 48 miles in length. There is an unbuilt gap from Shaoshing to Hangchow. There is a branch line of six miles from Hangchow to Konzenchiao. For text of loan agreement, see MacMurray, No. 1908/3.

[28] See MacMurray, notes to No. 1908/3.

Canton-Hankow Railway. The project of uniting Hankow to Canton by rail and thus giving a continuous rail route from the extreme north of China to its southern border has not yet been achieved, but considerable portions of the section between Hankow and Canton have been constructed and are now in operation. The history of the diplomatic negotiations with regard to this line are of sufficient interest to justify an outline statement of them.

The original concession for the line was granted by contracts signed April 14, 1898, and July 13, 1900, to an American syndicate—the American China Development Company—of which Mr. Calvin S. Brice was the leading spirit. It seems clear that a considerable motive leading the Chinese to grant this concession was that it had no apprehensions regarding the political ambitions of America, and, therefore, in a subsidiary undertaking, it was agreed that the company should remain an American company. This undertaking, as given in Article XVII of the agreement of July 13, 1900, was that "the Americans cannot transfer the rights of these agreements to other nations or people of other nationality." However, in spite of this provision, the American company permitted a majority of its stock to get into Belgian hands by purchase in open market, with the result that the control of the company came into their hands, the American president of the company was deposed, and American engineers in China on the railway line were superseded by Belgians. Thereupon the Chinese Government served notice upon the American Government that the concession was annulled. This action was not acquiesced in by the American Government and a long diplomatic contro-

versy arose. In result, the banking firm of J. P. Morgan & Company, acting as agents of the American company, bought back the shares held by the Belgians, and the Chinese Government then bought out the American interests. The terms of this settlement were very onerous to the Chinese for they were compelled to pay some $6,750,000, which was $3,750,000 in excess of what the Americans had spent. The agreement by which this repurchase was effected was dated August 29, 1905.[29]

Hukuang Loan. In June, 1906, the building of the road was turned over to merchants of the provinces through which it was to pass—Kwangtung, Hunan, and Hupeh. Under private auspices some 10,000,000 taels was spent with but thirty-five miles of poorly constructed and poorly equipped line to show for it. It became evident that the Imperial Government would have to reassume control of the project and again to solicit foreign financial aid. This the Peking Government did, and began negotiations with the French, German, and British banks, whereupon the American Government asserted that it possessed a right to participation in the proposed loan—a right based upon promises dating from 1903 and 1904, made by the Chinese Government.

In pressing this American claim to participation, the American President, Mr. Taft, took the step, extraordinary from the diplomatic point of view, of communicating personally and directly with the head of the Chinese

[29] The original concession to the American company included the right to build a railway from Canton to Fatshan and Samshui. This short line of 12 miles was completed in 1904. Another branch of the line from Chuchou to Pinghsiang, 65 miles in length, was built and opened to traffic in 1902.

Government, Prince Regent Chun. In a telegram, dated July 15, 1909, to Prince Chun, President Taft said:

I am disturbed at the report that there is certain prejudiced opposition to your Government's arranging for equal participation by American capital in the present railway loan. To your wise judgment it will of course be clear that the wishes of the United States are based not only upon China's promises of 1903 and 1904, confirmed last month, but also upon broad national and impersonal principles of equity and good policy in which a regard for the best interests of your country has a prominent part. I send this message not doubting that your reflection upon the broad phases of this subject will at once have results satisfactory to both countries. I have caused the Legation to give your minister for foreign affairs the fullest information on the subject. I have resorted to this somewhat unusually direct communication with Your Imperial Highness, because of the high importance that I attach to the successful result of our present negotiations. I have an intense personal interest in making the use of American capital in the development of China an instrument for the promotion of the welfare of China, and an increase in her material prosperity without entanglements or creating embarrassments affecting the growth of her independent political power and the preservation of her territorial integrity.

In a statement given to the press on January 6, 1910, reviewing the general policy of the United States in China as indicated not only by the Hukuang loan, the Chinchow-Aigun project, and the Manchurian railways neutralization scheme, the American Secretary of State, referring especially to the direct message of President Taft to the Prince Regent of China, said:

The grounds for this energetic action on the part of the United States Government have not been generally understood. Railroad loans floated by China have in the past generally been given an impartial guaranty and secured by first mortgages on the lines

constructed or by pledging provincial revenues as security. The proposed hypothecation of China's internal revenues for a loan [the Hukuang Loan] was therefore regarded as involving important political considerations. The fact that the loan was to carry an imperial guaranty and be secured on the internal revenues made it of the greatest importance that the United States should participate therein in order that this Government might be in a position as an interested party to exercise an influence equal to that of any of the other three Powers in any question arising through the pledging of China's national resources, and to enable the United States, moreover, at the proper time again to support China in urgent and desirable fiscal administrative reforms, such as the abolition of likin, the revision of the customs tariff and general fiscal and monetary rehabilitation.

The statement then goes on to say, that there were still stronger reasons for the action that had been taken, namely, as "the first step in a new phase of the traditional policy of the United States in China and with special reference to Manchuria." The "neutralization" scheme is then explained and the reasons for it outlined.

When the agreements or promises which China was alleged to have made to America were made public, they were shown to be by no means strong and unequivocal. It appeared that China had promised nothing more than to consult with American capitalists if foreign loans were solicited. Furthermore, that, on several occasions, when American financiers had been approached by the British bankers who were interested in the proposed loan, with a view to American participation, no reply had been returned.[30]

However, on May 23, 1910, an agreement was reached in a conference held at Paris between the representatives

[30] See *U. S. For. Rels.*, 1909.

of the British, French, German and American banks, for American participation in the Hukuang loan, and on May 20, 1911, the loan agreement with China was signed by the four banking groups.[31]

According to this agreement the loan was to be for £6,000,000 to run for forty years and the proceeds to be devoted to the payment of $2,222,000, American currency, of bonds that had been issued by the American China Development Company on behalf of the Chinese Government, and to the construction: (1) of a Chinese Government railway main line from Wuchang (across the Yangtze from Hankow) through Yochow and Changsha to a point on the southern boundary of the Province of Hunan, there connecting with the Kwangtung section of the Canton-Hankow Railway, an estimated distance of 900 kilometers; and (2) of a Government main line from a point at or near Kuangshui in the Province of Hupei, connecting with the Peking-Hankow line and passing through Hsiangyang and Chingmenchow to Ichang, an estimated distance of 600 kilometers; and (3) a line from Ichang to Kueichowfu in the Province of Szechuan, an estimated distance of 300 kilometers.[32] The first line was designated as the Hupei-Hunan section of the Canton-Hankow line; and the second line as the Hupei section of the Szechuan-Hankow line. The agreement provided that the lines of railway

[31] The Deutsch-Asiatische Bank, the Hongkong and Shanghai Banking Corporation, the Banque de l'Indo Chine, and the American group, consisting of J. P. Morgan & Co., Kuhn, Loeb & Co., the First National Bank and the National City Bank, all of New York City. For the text of the Hukuang loan agreement, see MacMurray, No. 1911/5; the Inter-Bank agreement is therewith printed in a note.

[32] This latter section was in substitution for the branch line from Chingmenchow to Hanyang, originally agreed upon by the Chinese Government.

already constructed by the two Provinces of Hupei and Hunan should be taken over and incorporated in the Canton-Hankow and Szechuan-Hankow Government Railway Administration.

As security it was provided that the loan, principal and interest, should constitute a first charge upon: (1) the Hupei General Likin, (2) the Hupei Additional Salt Tax for River Defense, (3) the Hupei New Additional Two Cash Salt Tax of September, 1908, (4) the Hupei collection of the Hukwang inter-provincial tax on rice, (5) the Hunan General Likin, and (6) the Hunan Salt Commissioner's Treasury Regular Salt Likin. These provincial revenues were declared to amount to a total of 5,200,000 Haikwan taels a year, and to be free from all other loans, charges, or mortgages. These provincial revenues were, however, not to be levied upon unless necessary. Primarily, capital payments upon the loan and interest charges were to be met from the revenues of the railways, and the Chinese Government undertook, in case these should prove insufficient for the purpose, to make arrangements to ensure payment from other sources. If it should become necessary to resort to the provincial revenues, they were, to the extent required, to be transferred to and administered by the Imperial Maritime Customs.

The proceeds of the loan were to be placed to the credit of a " Hukuang Government Railway Account " in designated foreign banks, payments therefrom to be made in accordance with periodical construction accounts furnished by the Chinese Ministry of Posts and Communications, these accounts to be kept in Chinese and English in accordance with accepted modern methods,

supported by all necessary vouchers, and open at all times to inspection by auditors appointed and paid by the banks, and obligated to satisfy the banks as to the due expenditure of the loan funds.

As regards "control," the agreement provided that the construction and control of the lines should be "entirely and exclusively vested in the Imperial Chinese Government," but that that Government should select for appointment a British Engineer-in-Chief for the Hupei-Hunan section from Wuchang to Yichang-hsien, a German Engineer-in-Chief for the Kuangshui-Ichang section of the Szechuan-Hankow line, and an American Engineer-in-Chief for the section from Ichang to Kueichoufu—these appointments to be approved by the banks. These engineers were to be under the orders of the Director-General and the Managing Director of the lines and were to carry out the wishes of the Ministry of Posts and Communications. Appointments and dismissals of technical members of the railway staffs were to be made by the Director-General and Managing Director in consultation with the Engineers-in-Chief. After completion of the construction, and during the currency of the loan, the Chinese Government was to continue to employ Europeans and/ or Americans as Engineers-in-Chief.

For the Hupei-Hunan section of the Canton-Hankow line the British and Chinese Corporation, and for the Hupei section of the Szechuan-Hankow line the Deutsch-Asiatische Bank, were to act as agents for the purchase of all materials, plant and goods required to be imported from abroad. Rails and other accessories were to be obtained from the Hanyang Iron Works. A commission

of five per cent. was to be paid on all purchases made through the British and Chinese Corporation and the Deutsch-Asiatische Bank—these purchases to be made in open market at the lowest rates obtainable. However, "with a view to the encouragement of Chinese industries," preference was to be given, at equal prices and qualities, to Chinese materials and goods manufactured in China, over British, French, German, American or other foreign goods.

The following option for supplying additional funds, if needed, was given the contracting banks:

ARTICLE XIX. Should the Imperial Chinese Government itself hereafter consider it desirable to construct extensions in connection with the railway lines named in Article II of this agreement in order that the interests of the country may be better served, such extensions shall be built by the Imperial Chinese Government with funds at its disposal from Chinese sources, but if foreign capital is required, and the terms offered by the Banks are as favorable as those offered by others preference will be given to the Banks.

The four banking groups were to take the loan in equal shares and without responsibility for each other.

The Hupei-Hunan section of the roads covered by the Hukuang loan agreement has been built from Wuchang to Changsha, a distance of 286 miles, where it connects with the Pingsiang colliery line, taking the rails as far along as Chuchow on the way to connect with the Kwangtung Railway. This section is now being operated wholly by the Chinese. Its financial results have not been satisfactory, but this has been largely due to the fact that it has no good southern terminal point.

Only foundation and masonry work has been done on the Hankow-Ichang section, which has been pushed from

Hankow about 120 kilometers (75 M.). This is the so-called German section.

The Ichang-Kweichow section suspended operation after completing surveys of the original line and extensions to Chengtu, maintaining only an engineer-in-chief and a nominal staff for protecting the property. This is the so-called American section.

The so-called German section of this railway has been taken over by the Chinese Government and is under the supervision at the present time (April, 1919) of the American Engineer-in-Chief.

The short branch of sixty-five miles from Chuchow to Pinghsiang was opened to traffic in 1902.

The Hukuang Loan and the Chinese Revolution of 1911. The following observations of Mr. Willard Straight, the representative of the American group of banks, party to the Hukuang loan, are of interest in connection with the statement that has often been made that the objection upon the part of the Chinese people to the "nationalization," that is the assumption by the Central Government of control of the lines covered by the loan, constituted an important element in the dissatisfaction with the Peking Government which led to the revolutionary outbreak in the latter part of the year 1911. Mr. Straight says:

"There was an ever-increasing agitation in the Provinces through which the Hukuang lines were to be constructed. Provincial railway companies were formed and secured from the vacillating Peking Government rights which violated the terms of the agreement initialed with the Tripartite Banks, and in which the Chinese had agreed the American group should be given a participation."

In a note Straight adds: "Considerable sums, quite insufficient, however, to build the railways in question, were secured by popular subscription, and in Szechuan Province by taxation also. Construction was commenced, and abandoned, and in a number of well-authenticated cases the funds obtained by the companies were either lost by the directors thereof, who speculated heavily in the Shanghai 'Rubber Boom,' or stolen by more simple and direct methods. The demonstrated inability of the provincial companies to do the work they had undertaken was used by the Imperial Government to justify its very sound policy of railway 'nationalization'."

In another place Mr. Straight says:

It has been generally stated that the disturbances in Szechuan Province in August and September last [1911] marked the beginning of the revolutionary movement. This is not the case except that the general unrest created thereby contributed to the rapid spread of the anti-Manchu sentiment. The Szechuan agitation was directed against the "nationalization" of railways, and the banking groups therefore have been accused of being the indirect cause of the revolt. This again is not true. The agitation was not against railway "nationalization" which the most intelligent leaders of Chinese public opinion recognized as desirable, but against the manner in which it was carried into effect. Sheng Kung Pao, the Minister of Communications, upon the signature of the Hukuang Loan Agreement took steps to repurchase the rights of the provincial companies in accordance with the "nationalization" plan. Incidentally, it is reported on the best authority, he bought up the major portion of some of the provincial bonds, and offered to redeem them at par. He did not acquire control of the Szechuan bonds, and therefore offered only 60 on their face value. Hence the riots.[33]

[33] Article "China's Loan Negotiations," contributed to *The Journal of Race Development*, April, 1913 (vol. III, pp. 369-411). The quotations are from footnotes on pages 384 and 386.

Tao-Ching or Pekin Syndicate Railway. In 1898 the Pekin Syndicate, a British-Italian syndicate, but now almost wholly British controlled, obtained the right to work coal and iron mines in several places in Shansi and in Honan which carried also the privilege of building railways connecting the mines with water navigation or a main railway line.[34] In 1905, under this privilege, the syndicate built a line from Taokow to Poshan, a distance of some 90 miles. By an agreement of July 3, 1905, the Chinese Government purchased the road, giving thirty-year bonds in payment, but permitted the syndicate to remain in control of the road until the bonds should be

The following comments of Mr. Straight with reference to the circumstances leading up to the loan are also of interest. He says: "There are different versions as to the exact course of events in China at this time. It is, however, sufficient to state that in conducting pourparlers with the Chinese authorities for a loan to construct the Canton-Hankow Railway (the British had a 'preference' for financing the building of this line), the representative of the British and Chinese Corporation at Peking refused to agree to 'Tientsin-Pukow' terms and insisted on more effective 'control.' The representative of the German group, however, accepted these conditions and secured the contract. The diplomatic protests and recriminations among the bankers which followed resulted in a compromise under which the British and Chinese Corporation was subordinated to the Hongkong and Shanghai Bank, which with its French associates, combined with the German group, to negotiate a loan to cover not only the Hankow-Canton but the Hankow-Szechuan Railways. The Agreement was initialled on the 6th of June, 1909, and the 'control' provisions accepted by the banks were similar to those embodied in the Tientsin-Pukow Agreement.

"The inclusion of the loan for the construction of the Hankow-Szechuan Railway in this operation entitled the American interests to the participation which the American group eventually secured.

"Rivalry between the British and German groups had enabled the Chinese in the original Hukuang agreement to secure Tientsin-Pukow terms despite the fact that the operation thereof had demonstrated that more stringent control provisions were needed."

[34] For the regulations establishing the syndicate's rights in Honan, see MacMurray, No. 1898/12.

paid, and to receive twenty per cent. of the net profits. The bonds were to be redeemable after 1916.

Projected Railways Since 1912. With the exception of the Changsha-Yochow and Yochow-Wuchang sections of the Canton-Hankow Railway, few lines of railway, except branch lines, have been opened to traffic in China since 1912. This has been due in part to the demoralization of China consequent upon the Revolution, and in part to the preoccupation of the Treaty Powers, since 1914, in the Great War.

A considerable number of railway concessions have, however, been granted by the Republican Government, and among them one to French-Belgian interests for a north and south trunk line from Tatungfu to Chengtu. Also the French have obtained the right to build a line from Yunnanfu to the Bay of Yamchow. A line has also been projected to extend the Kaifeng-Honan line eastward to the coast and westward into Kansu. A considerable section of this line has been built, connecting at Hsuchow with the Tientsin-Pukow Railway.

Shasi-Shingyi (Sha-Shing) Railway. After the failure in 1911 of the then pending international loan negotiations, the British Government gave its approval to a forty-year loan of £10,000,000 negotiated by the British contracting firm of Pauling & Company, Ltd., "for the construction and equipment of the railways from a point on the Yangtze opposite Shasi to Shingyi, in the Province of Kweichow, together with a branch line from Changteh to Changsha." [35]

[35] For the loan contract and operating contract for this railway, see MacMurray, No. 1905/5.

The loan agrement, signed July 25, 1914,[36] provided that Pauling & Company should issue on behalf of the Government of China a loan for £10,000,000, which should be in the form of Chinese Government bonds, the proceeds to be devoted to the construction of the lines of road that have been mentioned. The payment of the interest and the redemption of the bonds were of course to be guaranteed by the Chinese Government, and, in addition, the bonds were to constitute a first mortgage in favor of the contracting company upon the railway as and when constructed and on the revenues from it of all kinds and upon all materials, rolling stock, buildings, etc., purchased for the railway. There was to be established a head office under the direction of a Chinese Managing Director, and associated with him a Chief Accountant who should be an Englishman, and, after completion of construction, a British Engineer-in-Chief. For all technical appointments for the operation of the railway, Europeans of experience and ability were to be engaged, but if competent Chinese should be available for these positions they were to be preferred. The accounts of receipts and disbursements of the railway's construction and operation were to be in the department of the Chief Accountant, who was to organize and supervise them and report upon them. He was to certify all receipts and payments, which latter were to be authorized by the Managing Director. A school for the education of Chinese in railway matters was to be established by the Managing Director subject to the approval of the Chinese Government.

[36] For text of final agreement, see MacMurray, No. 1914/7.

Subject to the approval of Pauling & Company, a British firm of consulting engineers was to be appointed by the Government, whose representative in China should be an Englishman and be entitled Engineer-in-Chief, who, during construction, should supervise the work in the interest of the Government and of the bondholders. The contracting company was to act as agents, during construction, for the purchase of all materials from abroad. For its services the company was to receive an amount equal to the sum actually expended together with a further sum of five per cent. on the original net cost of all materials, plant and goods required to be imported from abroad. With a view to encouraging Chinese industries, rails manufactured at the Hanyang Steel and Iron Works, native cement, and other goods manufactured and produced in China were to be preferred at equal price and quality. At equal rates and qualities, goods of British manufacture were to be given preference over goods of other foreign origin.

Siems-Carey Concessions. By a contract signed May 17, 1916, the Siems-Carey Co., an American concern, obtained the right to "locate, build and work" steam railroads in China to an aggregate of 1,500 miles.[37] The following five roads, making up this aggregate, were enumerated:

Hengchowfu, in Hunan, to Nanning in Kwangsi.
Fengcheng, in Shansi, to Ninghsia in Kansu.
Ninghsia, in Kansu, to Lanchowfu in Kansu.

[37] By the Supplementary Agreement of September 29, 1916, this was changed to 1,100 miles. For texts of original agreement and supplements, see MacMurray, No. 1916/7.

Chungchow, in Kwangtung, to Lu Hwei in Kwangtung.
Hangchow, in Chekiang, to Wenchow in Chekiang.

It was provided, however, that should, for any reason, it become undesirable to build any of these lines, the Government of China would grant concessions between other points to an equal amount of mileage. In conformity with this undertaking, the American company, in lieu of certain of the above lines, has been given the concession to construct the Chu-Chin Railway from Chuchou, in Hunan near Changsha, to Chinchou in Kwangtung. This road, when constructed, will be approximately 700 miles in length. As part of the additional 400 miles which the company was to have the right to build, the Chinese Ministry of Communications, on February 7, 1917, suggested that a line be built from Chouchia-kou, in Honan, through Nanyang, to Hsiangyang, in Hupeh, a distance of 200 miles, and to be called the Chou-Hsiang Railway.

The agreement of May 17, 1916, with the American company, it is to be observed, was simply one for the construction of the proposed roads, the company to have no interest in them other than its compensation for its services as railway contractors. The financing of the projects was to be by bonds to be issued by the Chinese Government, the selling of which was to be undertaken by the company.[38]

The executive head of the roads was to be a Chinese Director-General, appointed by the Government, assisted by a Chief Engineer, a Traffic Manager, and an Auditor chosen and vouched for by the American company, and appointed by the Director-General. All plans and esti-

[38] This was to be done through the American International Corporation.

mates of construction were to be submitted in advance to the Minister of Communications for his information and approval, and the Government was to have the right to employ inspectors to inspect all work as it progressed. The company was to have a five per cent. commission on all purchases made in behalf of the roads (excepting purchases of lands), and eight per cent. of all other moneys expended for construction. Further, for handling and selling the bonds by which the roads were to be financed, the company was to receive twenty-five per cent. of the net profits derived from operating the roads after paying all operating and bond charges, until all the bonds should be paid.[39]

None of these roads have been built, although a considerable number of routes have been surveyed.

The projected line from Chuchow to Yamchow was objected to by the French as in violation of a prior concession in the form of a note from a former Vice-Minister of one of the departments of the Chinese Government. A line from a point on the Peking-Suiyuan road, running northwestward, was protested by the Russian Legation as in violation of a prior promise which China had made not to build in that region without first obtaining Russia's consent. The lines in Hunan and Hupeh were objected to by the British, who claimed that they had preferential rights there under a letter from Viceroy Chang Chih-tung. None of these objections have been conceded by either the American or Chinese Governments to be effective in excluding American enterprises in the designated localities.

[39] For constructing the section of the Chuchow-Chinchow line from Chuchow to Paoking in Hunan, and completing a survey of a route from

The appearance in the Siems-Carey contracts of the twenty per cent. participation in the profits of the lines to be built has been somewhat commented on, because, in the first place, it would seem to be a return to the earlier practice of recognizing what amounted to a part ownership of foreigners in the roads—a concession which for years the Chinese had sought to avoid;[40] and, in the second place, because China's engagements (some of them secret) with foreign syndicates to grant to them, in the future, as favorable terms as might be given to any other party, might make it necessary to grant the profit-participating privilege to those "most favored" foreign interests.[41]

the Peking-Hankow Railway through Hsiangyang (Hupeh) to Chengtu in Szechuan, an issue of $6,000,000 of five-year Treasury Bills was arranged for. By a supplementary agreement of September 29, 1916, the 25 per cent. of net profits was reduced to 20 per cent. At the time of the present writing only the amounts necessary for defraying the costs of surveys have been advanced by the bankers.

[40] The Chinese paid $1,000,000 to exclude the profit participation clause from the original Tientsin-Pukow agreement, and one of the purposes in converting the original Peking-Hankow loan had been the same.

[41] This point is especially stressed in a pamphlet entitled "The Breakdown of American Diplomacy in the Far East," printed (but not published) by George Bronson Rea. He says (p. 84): "The serious feature of reviving the profit-sharing clause in state-owned railways lies in the fact that due to China's secret understandings, the American contract compels the revision of all China's outstanding and unexecuted railway agreements. . . . To understand this situation better, it must be explained that China has entered into railway contracts with foreign syndicates for the financing and construction of approximately ten thousand miles of new line (exclusive of the American contract for eleven hundred miles) the loans for which have yet to be floated. Under present conditions the total amount of loans required for the construction of these eleven thousand one hundred miles will approximate $80,000 per mile, or an aggregate of $900,000,000. (Projected lines in Yunnan and Szechuan will cost over $150,000 per mile). If spread over a period of fifteen years, at least $60,000,000 will be required annually to finance the lines already contracted for. As matters stand,

Shantung Canal Improvement Loan. By an agreement of April 19, 1916,[42] with the American International Corporation, the Chinese Government, in behalf of the Government of the Province of Shantung, contracted a loan not to exceed $3,000,000, to run thirty years, and to bear 7% interest, the proceeds to be employed for improving the South Grand Canal in Shantung Province and reclaiming certain land areas. As security were pledged the lands to be reclaimed owned by the Government of Shantung Province, revenues to be derived by the Government from the lands affected by the proposed work, and all machinery and tools purchased by the loan funds. If these revenues should prove insufficient, the Government undertook to make good the deficiency with other revenues provided in the budget of Shantung Province.

Detailed provisions were contained in the agreement as to the direction under which the public works provided for were to be carried out and disbursements made. The engineering work was to be done by a contracting firm which was to receive as compensation 10% of the total cost of the work.

By an agreement of May 13, 1916, between the Government of China and the American International Corporation, a loan to the former of $3,000,000 was arranged for

the British, French, Belgian and Russian concession holders cannot comply with their obligations under the old terms. It is now impossible to issue loans under the pre-war 'cheap money' conditions. As there is no time limit attached to these contracts or any penalty for failure to carry them out within a specified time, they will pass into cold storage unless better terms are conceded." As to this agreement, it may be observed that such better terms would, in any event, and aside from the criticized provision of the American contract, have been necessary.

[42] For the text of this agreement, see MacMurray, No. 1916/5.

to be called the "Huai River Conservancy Grand Canal Improvement Seven Per Cent. Gold Loan of 1916," for carrying on the Huai River conservancy works.[43] As security for the loan were pledged all tolls and taxes exclusive of Likin, then or thereafter to be levied on the Grand Canal in Kiangsu Province. The work was to be carried on by a contracting company upon a percentage basis under the direction of a Chinese Director-General, with whom were to be associated an American Chief Engineer and American Chief Accountant.

Under date of November 20, 1917, the American International Corporation concluded a further agreement[44] with the Chinese Government under which it was to loan $6,000,000 for the improvement of the Grand Canal in the Provinces of Chihli and Shantung. The terms of this loan were similar to those under the agreement of April 19, 1916, which it replaced, and, as said, applied to the Grand Canal in Chihli as well as in Shantung. It was understood that Japanese interests were to participate in the floatation of the loan to the extent of $2,500,000.

With reference to the Grand Canal loan and the other Siems-Carey railway projects, it may be noted that a total of approximately $1,500,000 has been expended. This sum represents moneys advanced by the company on surveys and preliminary investigations. There have

[43] Printed in MacMurray, No. 1916/6. By an agreement of January 30, 1914, the American Red Cross had succeeded in obtaining an option from the Republic of China to advance the sum of $20,000,000 for improvement of the water courses embraced in Huai River district. These rights of the American Red Cross were taken up by the American International Corporation under its agreements with the Chinese Government of April 19, 1916, and May 13, 1916.

[44] Printed in MacMurray in note to No. 1916/5.

been no public subscriptions involved in either of these projects.

Railways Owned and Operated by Foreign Governments or Interests. The railways in China coming under this head include the Chinese Eastern Railway, the South Manchuria Railway system, the Shantung Railway from Tsingtau to Tsinanfu with its short branches, and the French Yunnan Railway. The circumstances under which these lines were built, and the almost complete extent to which they are operated by foreign governments, or corporations acting as the agents of such governments, have been so fully set forth in earlier chapters of this volume that a further discussion of them in this chapter will not be needed.

Summary. Grouping the railways of China according to the auspices under which they are operated or controlled, the following table is obtained:[45]

NAME OF LINE	DATE OF AGREEMENT	LENGTH OF LINE	FOREIGN NATION INVOLVED
I. *Lines owned and operated by foreign authority.*			
1. South Manchuria Railway..	1896	1150 Kms.	Japan (since 1905)
2. Chinese Eastern.....	1896	1722 Kms.	Russia
3. Yunnan Railway.....	1896	465 Kms.	France
4. Shantung Railway.....	1898	493 Kms.	Germany (Japan)
II. *Lines owned by the Chinese Government, but with a large measure of administrative control reserved by the mortgage holders.*			
1. Peking-Hankow.....	1897	1313 Kms.	Belgium
(Redeemed and placed under completed Chinese control in 1908)			
2. Peking-Mukden.....	1898	975 Kms.	Great Britain
3. Chengting-Taiyuan.....	1902	243 Kms.	Russia-France

[45] This is based upon the table given by Mr. J. E. Baker, American Adviser to the Chinese Ministry of Communications, in his excellent article in *Millard's Review* of November 1, 1919, entitled "China's Railway Condition in a Nutshell."

	NAME OF LINE	DATE OF AGREEMENT	LENGTH OF LINE	FOREIGN NATION INVOLVED
4.	Shanghai-Nanking	1903	327 Kms.	Great Britain
5.	Kaifeng-Honan	1903	185 Kms.	Belgium
6.	Taokow-Chinghua	1905	150 Kms.	Great Britain
	(Transferred from private ownership in 1905)			
7.	Canton-Kowloon	1907	143 Kms.	Great Britain
	(35 kilometers additional, on leased territory, is British owned, and operated as a through line with the Chinese section)			
8.	Kirin-Changchun	1907	130 Kms.	Japan
	(Note: All of the above lines, except the Kaifeng-Honan and the Kirin-Changchun, were agreed upon provisionally in 1898-99)			
III.	*Lines under complete Chinese control, but subject to the stipulation that foreign engineers and chief accountants shall be employed.*			
1.	Tientsin-Pukow	1908	1106 Kms.	Great Britain
2.	Shanghai-Hangchow-Ningpo	1908	286 Kms.	Great Britain
3.	Peking-Hankow	1908	1313 Kms.	Belgium
4.	Canton-Hankow and		900 Kms.	Four Nation
	Hankow-Szechuan	1911	500 Kms.	Group
5.	Lung-Hai	1912	1600 Kms.	Belgium
6.	Tung-Chengtu	1913	1600 Kms.	France-Belgium
7.	Pukow-Sinyang	1913	560 Kms.	Great Britain
	(Preliminary agreement signed in 1899)			
8.	Nanking-Hunan	1914	1100 Kms.	Great Britain
9.	Yamchow-Yunnan	1914	1900 Kms.	France
10.	Shasi-Shingyi	1914	1100 Kms.	Great Britain
11.	Routes to be determined	1916	1500 Kms.	America
IV.	*Lines constructed without use of foreign loans.*			
1.	Chuchow-Pinghsiang	1898	90 Kms.	
2.	Canton-Samshui	1904	49 Kms.	
	(Purchased outright from American China Development Co. in 1905)			
3.	Peking-Suiyuan	1906	495 Kms.	
4.	Changchow-Amoy	1911	28 Kms.	

In addition to the above there are some 680 kilometers of line built by private and provincial capital, most of which are not affected with any foreign interest.

FOREIGN LOANS TO CHINA CLASSIFIED ACCORDING TO THEIR SECURITY

A complete and accurate statement of all of China's loans—their amounts, terms, securities pledged, etc.—is a practical impossibility. It is doubtful whether, for reasons stated in Chapter I, such a list could be compiled by the Chinese Government itself. The lists which follow, are, therefore, to be accepted only as tentative. They have, however, been compiled with considerable care, and, it is hoped, will be found more nearly complete and accurate, than lists elsewhere to be found.

CUSTOMS REVENUE

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1895	Imperial Government loan of 1895 (Franco-Russian)	£7,910,000.00	4%	94½	1931
1896	Imperial Government loan of 1896 (Anglo-German)	£10,000,000.00	5%	94	1932
1898	Imperial Government loan of 1898 (2nd Anglo-German)	£12,000,000.00	4½%	83	1943
1902	Boxer Indemnity.....	£61,565,182.00	4%		1940
1913	Reorganization Gold Loan (5 Powers).....	£25,000,000.00	6%	84	1960
1914	Italo-Belgian Loan or conversion 5% loan (Banque de Pate Laon Belgium)	£100,000.00	5%		1918 or 1955

LIKIN

The Likin revenue is sometimes listed along with other provincial taxes. In connection with some loans the likin of certain specified provinces is mentioned.

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1898	Imperial Government loan of 1898 (2nd Anglo-German loan)....	£12,000,000.00	4½%	83	1943
1908	Loan for Tientsin-Pukow Railway (Hong-				

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
	kong-Sh'ai Bank and Deutsch-Asiatische Bank)	£3,000,000.00	5%	93	1938
1909	Loan for Tientsin-Pukow Railway (Hongkong and Sh'ai Bank and Deutsch-Asiatische Bank)	£2,000,000.00	5%	93	1938
1910	Loan for Tientsin-Pukow Railway (Hongkong and Sh'ai Bank and Deutsch-Asiatische Bank	£3,000,000.00	5%		1940
1911	Hukuang Railway loan (4 Powers)	£6,000,000.00	5%	95	1936

SALT REVENUE

NOTE. In the case of the earlier loans salt revenue for specified provinces was named as security.

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1898	Imperial Government Loan of 1898 (2nd Anglo-German)	£12,000,000.00	4½%	83	1943
1902	Boxer Indemnity.....	£61,565.182.00	4%		1940
1910	Chihli Provincial Bonds of 1910.....	Tls 3,200,000.00			
1911	Hukuang Railway Loan	£6,000,000.00	5%	95	1936
1912	Chinese Government 5% Gold Loan (Crisp Loan)	£5,000,000.00	5%	89	1952
1913	Reorganization Loan (5 Powers)	£25,000,000.00	6%	84	1960
1911	Hupei Provincial Loan of 1911.....	Tls 2,000,000.00	7%		
1917	Kuangtung Loan (Bank of Taiwan)	Yen 1,500,000.00			
1917	Central Government (1st advance on 2nd Reorganization Loan) Yokohama Specie Bank)..	Yen 5,000,000.00	7%	93	1918

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1918	Yokohama Specie Bank share of Group Bank advance for Flood Relief	Yen 200,000.00			
1918	2nd Advance on 2nd Reorganization Loan (Yokohama Specie Bank)	Yen 10,000,000.00	7%	99	1919
1918	Central Government (Yokohama Specie Bank)	Yen 1,000,000.00	7%	par	1918
1918	3rd Advance on 2nd Reorganization Loan (Yokohama Specie Bank)	Yen 10,000,000.00	7%		1919

RAILWAY: PROPERTY AND REVENUES

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1898	Imperial Railways of North China (British Chinese Corporation 5% Gold Loan).....	£1,600,000.00	5%	97	1944
1902	Loan for Cheng-Tai Railway	£791,000.00	6%	90	1932
1903	Loan on Kaifeng-Honan Railway	£593,250.00	5%		1934
1904	British and Chinese Corporation for Shanghai-Nanking Railway (Hongkong and Shanghai Bank).....	£2,250,000.00	5%	90	1953
1904	Loan for Shanghai-Nanking Railway (Hongkong and Sh'ai Bank)	£650,000.00	5%	95	1952
1905	Loan for Taokow-Chinghua (Tao-Ching) Railway (Peking Syndicate)	£700,000.00	5%	90	1935
1905	"Ditto".....	£100,000.00	5%	90	1935
1907	Loan for Canton-Kowloon Railway (British and Chinese Corporation)	£1,500,000.00	5%	94	1937

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1907	[b]Loan for Kaifeng-Honan Railway (see *a* above)	£632,800.00	5%	90	1934
1908	Loan for Tientsin-Pukow Ry. (Imperial Chinese Govt. 5% Tientsin-Pukow Ry. Loan) (Hongkong and Sh'ai and Deutsch-Asiatische Banks)	£3,000,000.00	5%	93	1938
1908	Tientsin-Pukow Railway 5% Hongkong and Sh'ai and Deutsch-Asiatische Banks) ..	£3,000,000.00	5%		
1908	Shanghai-Hangchow-Ningpo Railway Loan (British and Chinese Corporation)	£1,500,000.00	5%	93	1938
1909	Hsinmintun-Mukden Railway (Yokohama Specie Bank).....	Yen 186,750.00	5%	93	1927
1909	Imperial Railway Administration, Kirin-Changchun Railway (Yokohama Specie Bank)	Yen 2,150,000.00	5%	93	1934
1912	Shanghai-Fengching Ry. Loan to Nanking Provisional Government (Okura and Company)	Yen 3,000,000.00	8%		1922
1910	Imperial Railway Administration (Redemption of Peking-Hankow Railway)[1]	Yen 2,200,000.00	7%	97½	1920
1912	Nanchang-Kiukiang Railway	£500,000.00	6½%	95	1927
1913	Lung-Hai Railway.....	£4,000,000.00	5%	85	1952

[1] See footnote to Anglo-French Loan for redemption of Peking-Hankow Railway of 1908.

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1913	Ministry of Communications (For construction of Ssupingkai-Chengchiatun Railway)	Yen 5,000,000.00			
1913	Pukow-Hsinyang Railway (British and Chinese Corporation)....	£3,000,000.00	5%		
1914	Honan Railway Loan..	£800,000.00	5%	87½	1935
1914	British and Chinese Corporation Loan.....	£375,000.00	6%	91	1931
1914	Ching-Yu Ry. Advances..	Frs 32,115,000.00	6%	89½	1919
1916	Tung-Cheng Railway...	£10,000,000.00			
1916	Pin-Hei Railway.....	50,000,000 roubles			
1916	Siems-Carey Railways Advances	U.S. $1,000,000.00	7%		
1917	Imperial Railway Administration, Central Government (South Manchuria Railway).	Yen 6,500,000.00	5%	91½	1917
1918	Ssupingkai-Chengchiatun Railway	Yen 2,600,000.00	7%		1919
1918	Nanchang Railway Loan (Toa Kogyo Kaisha)	Yen 100,000.00 (?) or $7,000,000.00 (Mex.)			
1918	Kirin-Hueining Railway (3 Japanese Banks).	Yen 10,000,000.00	5%	par	1958
1918	Peking-Suiyuan Railway (Japanese Banks)....	Mex.$3,000,000.00			
1918	Four Railways in Manchuria and Mongolia	Yen 20,000,000.00	8%		1958
1918	Railways in Shantung..	Yen 20,000,000.00	8%		1958

CANAL TOLLS

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1917	Grand Canal Loan (Siems-Carey Advances)	U.S. $700,000.00	8%		

SUNDRY PROVINCIAL TAXES

NOTE. Under this classification Likin is also included in the case of some loans.

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1908	Loan for Tientsin-Pukow Railway.....	£3,000,000.00	5%	93	1938
1908	Tientsin-Pukow 5% Railway Loan (Anglo-German 1st Issue)...	£3,000,000.00	5%	98¾	
1908	Anglo-French Loan for Redemption of Peking-Hankow Railway[2]...	£5,000,000.00	4½%	98	1938
1909	Loan for Tientsin-Pukow Railway (2nd Issue)	£2,000,000.00	5%	93	1938
1910	Tientsin-Pukow Railway Supplemental Loan (Anglo-German) (3d Issue)	£3,000,000.00	5%	100½	
1911	Hukuang Railway Loan (4 Powers).....	£6,000,000.00	5%	95	1936
1911	Imperial Railway Administration (Yokohama Specie Bank)..	Yen 10,000,000.00	5%	95	1936
1916	Fengtien Province (for relief of Chinese banks in Mukden.....	Yen 2,000,000.00	6½%		1920
1918	Fukien Province.....	Yen 1,000,000.00			
1918	Hupei Province (Yokohama Specie Bank)..	Yen 1,000,000.00			
1918	Shensi Province (Okura Group)	Yen 1,000,000.00			
1918	Hupei Province.....	Yen 1,000,000.00			

[2] It is understood that by an agreement with the Bank of Communications, August 1, 1910, the text of which is not available, Messrs. Dunn, Fischer and Co., of London, purchased bonds of this redemption loan to the nominal value of £450,000; on August 15, 1910 the Yokohama Specie Bank took bonds to the value of Yen 2,200,000; and the City Safe Deposit and Agency Co., Ltd. took a further lot as security for a loan of £150,000. See 1910 Imperial Railway Administration loan, 1910 Chinese Government Peking-Hankow Loan, and 1912 Chinese Government 7% Peking-Hankow Ry. Redemption Loan.

GOVERNMENT GUARANTEE

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1904	British and Chinese Corporation Loan for Shanghai-Nanking Railway	£2,250,000.00	5%	90	1953
1907	Loan for Canton Kowloon Railway.....	£1,500,000.00	5%	94	1937
1909	Imperial Railway Administration (Yokohama Specie Bank)..	Yen 186,750.00	5%	93	1927
1909	"Ditto"	Yen 2,150,000.00	5%	93	1934
1917	2nd Loan to Bank of Communications (3 Japanese Banks).....	Yen 20,000,000.00	7½%		1920
1917	Canton Provincial Loan (Bank of Taiwan)...	Mex.$3,000,000.00	8%	96	1919

PEKING OCTROI

DATE	NAME OF LOAN	OUTSTANDING AMOUNT	RATE	CHINA PRICE TO	MATURITY
1912	First Arnhold Karberg Loan	£60,000.00	6%	95	1916
1912	Second Arnhold Karberg Loan	£350,000.00	6%	95	1921

TREASURY NOTES OF THE CHINESE GOVERNMENT

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1913	Third Arnhold Karberg Loan	£200,000.00	6%	95	1917
1918	Chinese Ministry of War (Marconi Wireless Loan) (In effect an advance against purchase)	£600,000.00	8%	par	
1910	Chinese Government 7% Peking-Hankow Railway Redemption Loan (Birchal Loan).....	£450,000.00	7%	par	1920

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1912	Chinese Government Peking-Hankow Ry. Redemption Loan....	£150,000.00	7%	92	1920
1917	Ministry of Communications (Japanese Group)	Yen 5,000,000.00	7½%		1920
1917	2nd Loan to Ministry of Communications (3 Japanese Banks).....	Yen 20,000,000.00	7½%		1920

TAXES ON TITLE DEEDS

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1913	First Austrian Loan (Arnhold Karberg and Co.)	£1,200,000.00	6%	92	1918
1913	Second Austrian Loan (Arnhold Karberg and Co.)	£2,000,000.00	6%	92	1918
1913	Third Arnhold Karberg Loan	£300,000.00	6%	95	1918

INDUSTRIAL SECURITIES

(i. e. properties and revenues)

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1913	Chinese Government 5% Industrial Gold Loan	£4,000,000.00	5%	84	1964
1917	Kwangtung Provincial Government (Japanese syndicate) (Cement factory)	Yen 3,000,000.00	8%	96	1919
1918	Central Government of China (Mitsui Bussan Kaisha) (Bureau of Engraving and Printing)	Yen 2,000,000.00	8%	98	1921

TOBACCO AND WINE TAXES

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1908	Peking-Hankow Redemption Loan (Banque L'Indo Chine and Hongkong and Shanghai Bank).....	£5,000,000.00	5% and 4½%	98	1938
1913	Chinese Government Industrial 5% Gold Loan (Pukow Port Contract) (Banque Industrielle)	Frs 100,000,000.00	5%	84	1964
1914	Ching-yu Railway Contract (Banque Industrielle)	Frs 600,000,000.00	5%	89½	1964
1919	Continental and Commercial Trust and Savings Bank Loan..	U.S. $5,500,000.00	6%		1922
1918	Arms and Munitions Loan (Exchange Bank of China)	Yen 20,000,000.00	8%		
1918	Canton Government (Bank of Taiwan)...	Yen 800,000.00			1919
(?)	Political Loan.....	Yen 2,000,000.00			

LAND TAXES

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1914	Italo-Belgian Loan or Conversion 5% Loan (Banque de Pate Laon, Belgium)	£100,000.00	5%		1919

PAWNSHOP AND SILVER TAXES (Canton)

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1910	Canton Government....	Yen 1,000,000.00	6%		

STAMP TAXES

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1913	Third Austrian Loan..	£500,000.00	6%	92	1917
1916	Austrian Postponement Loan (Conversion of 3 Austrian Loans. See under Tax on Title Deeds)	£1,233,000.00	8%	92	1920
1917	Grand Canal Loan (part of Siems-Carey Loan)	U.S. $700,000.00	8%		

HANYEHPING COAL AND IRON COMPANY

NOTE. In the treaty of May, 1915 the Chinese Government agreed not to pledge this security to interests other than Japanese nor to confiscate same.

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1903	Industrial Bank of Japan	Yen 3,000,000.00	6%		1933
1906	Mitsui Mining Co.....	Yen 1,000,000.00	7½%		semi-annual
1906	Okura and Co.....	Yen 2,000,000.00	7½%		1913
1908	Yokohama Specie Bank.	Yen 1,500,000.00	7½%		1918
1908	Yokohama Specie Bank.	Yen 500,000.00	7½%		1918
1909	Yokohama Specie Bank.	Yen 6,000,000.00	7½%		1919
1910	Mitsui Mining Co.....	Yen 1,000,000.00	7%		1912
1912	Mitsui Mining Co.....	Yen 2,000,000.00	7%		1914
1913	Yokohama Specie Bank.	Yen 15,000,000.00	7%-6%		1953
1913	Nanking Provisional Government	Yen 2,000,000.00	7%		1914

MINES

(Tin, copper, iron, etc., exclusive of Hanyehping)

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1913 (?)	Provincial Banks of Hunan and Hupei (Hsiang Pi Shan Iron Mine)	Yen 2,000,000.00			
1913 (?)	Yunnan Government (Government revenue from Ko Chiu Tin Mine)	Yen 3,000,000.00			

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1915 (?)	Central Government of China (Feng Huang Shan Iron Mines)	1,000,000.00			
1915	Central Government of China (Mines in Hunan and Anhui)	Yen 5,000,000.00	6%	94	1918
1918	Tan Hao-ming (Rebel Governor of Hunan) (Iron mines at Taipingshan in Anhui and the Shuikoushan mines in Hunan)	Yen 2,000,000.00 or 2,500,000.00	7%	94	1923
1918	Fengtien Province (Stock in Penhsihu Colliery owned by Province)	Yen 20,000,000.00			
1918	Fengtien Province (Stock in Penhsihu Colliery) (Redemption of small coin notes)	Yen 3,000,000.00	6½%	95	1920 or 1921
1918	Kiangsi Province (Yu Kan Iron Mines)	Yen 3,000,000.00			
1918	Central Government. (Mines in Kuangtung Province) (Okura)	Yen 2,000,000.00			
1918	Kirin Forestry Loan (Gold Mines in Kirin and Heilungkiang)	Yen 30,000,000.00	7½%	par	1928
1918	Yunnan Province (cf. above) (Rev. of Ko Chiu Tin Mine)	Yen 3,000,000.00			
1918	Tsao Kun Government of Chihli Province Kailan Mine shares	Yen 1,000,000.00			

NATIVE CUSTOMS REVENUE

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1902	Boxer Indemnities	£61,565,182.00	4%		1940
1917	Central Government (Relief for Chihli Flood sufferers)	Yen 5,000,000.00	7%	par	1918

CABLES, TELEGRAPHS AND TELEPHONES

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1900	Anglo-Danish Telegraph Loan (Shanghai Taku cable)	£210,000.00	5%		1930
1901	Anglo-Danish Telegraph Loan (Chefoo Taku cable)	£48,000.00	5%		1930
1911	Telegraph Loan by Eastern Extension and Great Northern Telegraph Co.	£500,000.00	5%	par	1947
1918	Telegraph Administration (Chinese telegraph lines and property)	Yen 20,000,000.00	7½ or 8%	98¾ or par	1923
1918	Canton Branch Bank of China (Bank of Taiwan) (Canton Telephone Exchange)	Mex. $500,000.00	7½%		
1918	Wireless Loan (Mitsui and Co.)	Yen 3,000,000.00 or 5,000,000.00	7½%		

SECURITY UNKNOWN

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
(?)	Loan to Hankow Mint	Yen 2,000,000.00			
1916	Kuangtung Provincial Government	Yen 600,000.00			
1916	Shantung Province	Yen 1,500,000.00			
1916	Hankow Paper Mill	Yen 2,000,000.00			
1916	Tientsin Spinning Mill.	Yen 600,000.00			
1917	Hankow Hydraulic Electric Co.	Yen 1,000,000.00			
1917	Nanchang Railway Loan	Yen 2,000,000.00			
1917	Shantung Loan	Yen 1,500,000.00			
(?)	Japanese Loan to Ministry of Communications to enable it to repay certain indemnities to the Ministry of Finance and to provide funds for the railway administration	£1,000,000.00			

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1917	List pub. by *Far Eastern Review*, Aug. 1918...	4 small loans.			
1918	Supplementary loan for Kirin-Changchun Railway	Yen 630,000.00			
1918	Central Government (Purchase of Arms).....	Yen 14,000,000.00	7%	95½	
1918	Chihli Provincial Loan	Yen 1,000,000.00			
1918	Arms and Ammunition Loan	Yen 20,000,000.00			

DOMESTIC LOANS OF CHINA CLASSIFIED ACCORDING TO THEIR SECURITY

CUSTOMS REVENUE

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1918	7th year Domestic Loan (Payable from monthly instalments released by Maritime Customs of deferred Boxer Indemnity)	Mex.$48,000,000.00	6%	par	1923

RAILWAYS, PROPERTY REVENUE

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1914	3rd Domestic 6% Loan.	Mex.$24,000,000.00	6%	90	1923

LIKIN

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1914	3rd Domestic Loan....	Mex.$20,000,000.00	6%	par	1927

OCTROI

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1914	2nd Domestic 6% Loan.	Mex.$24,000,000.00	6%	90	1923

WINE AND TOBACCO TAX

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1916	Republic of China 6% Gold Treasury Notes	Mex. $5,000,000.00	4%		1919
1917	Chinese Government 6% Internal Loan..betw.	Mex.$5,000,000.00 and $6,000,000.00			

LAND TAX

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1912	Nanking 8% Military Loan	Mex. $6,367,640.00			1920

NATIVE CUSTOMS

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1915	3rd Domestic 6% Loan.	Mex.$24,000,000.00			1924
1918	7th Year Domestic Loan of Republic of China.	Mex.$45,000,000.00	6%	par	1922

STAMP TAX

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1912	1st Domestic 6% Public Loan.....	Mex. $4,006,920.00	6%		1947

TITLE DEEDS

DATE	NAME OF LOAN	AMOUNT OUTSTANDING	RATE	PRICE TO CHINA	MATURITY
1912	1st Domestic 6% Public Loan.....	Mex. $4,006,920.00	6%		1947

SCHEDULE OF CHINESE NATIONAL REVENUES

Based upon estimates and statistics contained in Chu Chi-chien's proposed plan for reorganization in China submitted to the Chinese peace conference sitting at Shanghai, 1919[2]

REVENUE	1915	1916	1917
Customs	HK Tls 36,740,000	Tls 37,760,000	Tls 38,180,000 It is estimated revised tariff will make this HK Tls. 73,000,000.
Tax on Commodities. This tax includes doubtless, *Likin*, Destination Tax, etc.	$33,700,000	$39,400,000	$33,700,000
Salt	$80,459,007	$82,704,689	$80,287,366
Taxes on Title Deeds	Estimated for the fiscal year 1918-19		$3,133,165
Peking Octroi	———	———	———
Mining Tax	Estimated for the fiscal year 1918-19		$876,802
Land Taxes	$75,775,942	$81,937,041	———
Stamp Tax	Estimated for the fiscal year 1918-19		$6,525,000
Native Customs	$7,420,000	$7,160,000	$6,000,000
Tobacco and Wine Taxes	Estimated receipts for the fiscal year 1918-19.		
Licenses	$2,039,852		
Tax	5,673,931		
Additional Tax	3,506,500		
Monopoly	12,134,986		

[2] See *Far Eastern Review*, June, 1919.

INDEX

Administrative Integrity of China, 264.
Administrative Ordinances in Settlements and Concessions, 214.
Advisers in China, 265.
Aglen, Sir F. A., 137.
American Note of June, 1917, 447.
American Treaty of 1903, 20.
American Treaty of 1844, 20, 48.
Amherst, mission of, 102.
Amoy, Japanese police boxes in, 81; treaty port, 103.
Amur Region, annexed by Russia, 288.
Anglo-Japanese Alliance, 258, 301, 329.
Annam, lost by China, 267; frontier trade with, 152.
Antung, customs at, 147.
Antung-Mukden Railway, 312, 338.
Arms Contract, 423.
Arms and Ammunition, importation of, prohibited, 120.
Arnhold, Karberg & Co., loan by, 507.
Arnold, Julean, quoted, 188.
Arrests, by Chinese officials, 65 *et seq.*
Asakawa, K., cited, 288 n.
Assessors, in Chinese courts, 52.

Banks, foreign, as financial agencies in China, 485.
Banque du Nord. See Russo-Asiatic Bank.
Barton, Sidney, quoted, 58.
Berthemy Convention, 201-202.
Bills of Lading, taxed, 130.
Bland, J. O. P., cited, 292 n.
Boat Taxes, 129.
Boxer Indemnities, 493 *et seq.*
British Sphere of Interest, 281 *et seq.*; railway concessions, 282; Russian agreement of 1899, 283.
British Supreme Court for China, 35 *et seq.*
Burma, annexed by Great Britain, 268; frontier trade with, 149.

Canton-Kowloon Railway, 539.
Carey, W. F., quoted, 4.
Carr, L., 136.
Casini Convention, 288 *et seq.*
Changchun-Kirin Railway, 313.
Changsha, 115 n.
Chefoo, Settlement at, 218.
Chefoo Convention, 22 n., 115, 467.
Chengchiatun Incident, 85; Japanese demands, 347 *et seq.*
Chengtinfu-Taiyuanfu Railway, 537.
Cheseborough Co., case of, 176.
Chicago Bank Loan, 508.
Chientao, status of Koreans in, 26.
Chinchow-Tsitsihar Railway, 318, 321. See Neutralization of Manchurian Railways.
Chinchow-Aigun Railway, 322.
Chinese Circular of 1878, 11, 42 n.
Chinese Eastern Railway, frontier trade along, 149; status of, 292 *et seq.*
Chinese Employees, arrest and trial of, 26.
Chu, Dr. Chin, quoted, 122, 126, 133; cited, 135.
Coal Mines, Fushun and Yengtai, 367 *et seq.*; see Hangyehping.
Cobbett, Pitt, quoted, 271, 272.

Co-Hong, abolished, 105.
Commerce. See Foreign Commerce; Customs.
Companies Act, British, revision of, 189.
Concessions, at Treaty Ports, 208 *et seq.;* classes of, 271.
Consortium, proposed new, 511 *et seq.;* Six Power, 499; American withdrawal, 500.
Consular Agents, establishment of, in China, 105.
Consular Courts, 28 *et seq.;* American statutory provisions, 29, 88 *et seq.*
Consumption Taxes, 128, 129.
Converts, Chinese, to Christianity, 293.
Continental Trust and Savings Bank of Chicago, 508.
Copyrights, 169 *et seq.*
Corporations, foreign, in China, 181 *et seq.;* Chinese, foreign shareholders in, 185; taxation of, 187.
Crisp Loan, 497.
Currency Loan of 1911, 494.
Cushing, Caleb, quoted, 15.
Customs, schedules of, 103; rates of, 117; free list, 119; Regulations, 152 *et seq.;* in Kiaochow, 235. See Inspector General; Maritime Customs; Native Customs; Frontier Trade.

Dairen, customs at, 144. See Liaotung Peninsula.
Dalny. See Liaotung Peninsula.
Dane, Sir Richard, reorganization of Salt Administration, 505 n., 122 n.
Debts, China's public, 483 *et seq.;* classification of, 487.
Deeds. See Landholdings.
Deep Bay, lease of, 239.
Denby, Hon. Charles, cited, 188.
Denby, American Minister, quoted, 199, 206.
Destination Taxes, 126.
Dillon, E. J., quoted, 231.
Diplomatic Corps, establishment of, at Peking, 108.
Dongdang, railway to Lunchow, 277.

Eagle Brand Condensed Milk, imitation of, 180.
Eastern Inner Mongolia, 457 *et seq.* See Mongolia.
Extraterritoriality, 13 *et seq.*, 110; basis of, 16 *et seq.;* protégés, 24; law enforced, 41 *et seq.;* disadvantages of, 70 *et seq.;* possible abolition of, 75 *et seq.;* argument of Chinese at Paris, 76; police boxes, 80; in leased areas, 242 *et seq.;* Japanese demands for, in Manchuria, 343.
Extraterritorial Courts, 27 *et seq.*

Favored Nation Clause. See Most Favored Nation.
Ferguson, J. C., quoted, 432 n.
France, lease of Kuangchouwan, 238; sphere of interest, 273.
Free List, 119.
French Settlement at Shanghai, 64.
Foochow, treaty port, 103.
Foreign Corporations. See Corporations.
Foreign Commerce, 102 *et seq.*
Forestry Loan, 363.
Frontier Trade, with Russia, 148; with Burma and Indo-China, 149, 276; China desires abolition of, 150 *et seq.*
Fukien, Japanese interest in, 411; police boxes in, 81.
Fushun Coal Mines, 367.

Garrisons, foreign, in China, 221.
General Regulations of 1843, 110.

Germany, lease of Kiaochow, 228; rights and interests in China, 285, 371 *et seq.*
Girard, A., cited, 232, 291.
Gold Mining Loan, 363.
Great Britain, lease of Kowloon, Mirs Bay and Deep Bay, 239; lease of Weihaiwei, 240.
Grey, Sir Edward, quoted as to Japan's special interests, 445.

Hague Opium Conferences, 473 *et seq.*
Hainan, non-alienation of, 276.
Hangyehping Iron Works, 415.
Hankow, Settlements at, 209.
Harbin, Russian political jurisdiction in, 306 *et seq.*
Harriman-Ito Railway Agreement, 310.
Hart, Sir Robert, 72 n., 137, 156.
Hay, Secretary, Open-Door circular, 246 *et seq.*
Herod. Favored Nation Treatment, quoted, 9.
Hinckley, F. E., quoted 18 n., 201; cited, 13 n.
Hoomun-Chai Treaty, 11.
Hornbeck, S. K., quoted, 9, 144 n., 421; cited, 443 n.
Hsinmintun-Fakumen Railway, 313.
Hsinmintun-Mukden Railway, 355.
Huai River Conservancy Loan, 566.
Hukuang Loan, 550 *et seq.*
Hulutao, port of, 359.

Ichowfu, railway to, 371.
Ili Convention of 1881, 151.
Indo-China, lost by China, 267; frontier trade with, 149.
Influence, Spheres of. See Spheres of Influence.
Inland Navigation, 108, 161 *et seq.*
Inland Waters, foreign warships on, 166.
Interest, Spheres of. See Spheres of Interest.
Interior, Missionaries in, 199; travel in, 110; warehouses in, 111. See Passports.
Inspector-General of Maritime Customs. See Maritime Customs.
International Settlement. See Shanghai.
International Postal Union, China's adherence to, 156.
Ishii, Viscount, quoted, 449 n.
Italy, lease of Sanmen Bay refused, 242.

Japan, alliance with Great Britain, 301; declares war on Russia, 302; position of, in Shantung, 380 *et seq.*; claim of sphere of interest in Fukien, 411. See Manchuria; Eastern Inner Mongolia; Twenty-One Demands.
Japanese Loans, negotiated by pseudo-official, 6.
Japanese Treaty of 1895, 110; Treaty of 1903, 108.
Kaomi, German troops withdrawn from, 234, 236.
Kawakami, K. K., quoted, 351.
Kent, P. H., quoted, 524 n.
Kiaochow, customs at, 141 *et seq.*; lease of, to Germany, 228; German troops withdrawn from Chinese city of, 234, 236. See Tsingtao.
King, Gerald, quoted, 120, 125, 139, 155; cited, 135 n.
Kirin-Hueining Railway, 362.
Kirin-Changchun Railway, 337, 355.
Kirin Mining and Forest Loan, 521.
Knox, Secretary, neutralization scheme, 316 *et seq.*
Koo, V. K. W., quoted, 14, 18 n., 23, 45, 207; cited, 13 n., 20.

Korea, trade between, and Manchuria, 148; American guarantee to, 364 n.
Koreans, status of, in Chientao, 26.
Kowloon, lease of, 239.
Kuangchouwan, lease of, 238; railway from, 279.
Kwangsi, mines in, 277.
Kwangtung, mines in, 277.

Landholding, 192 *et seq.*; modes of acquiring title, 195 *et seq.*; in Concessions and Settlements, 210 *et seq.*
Lansing-Ishii Agreement, 429 *et seq.*
Lansing, Secretary, testimony before U. S. Senate Committee, 437 *et seq.*
Laokai-Yunnanfu Railway, 280.
Lay, H. N., 136.
Latter, A. M., quoted, 52, 72, 74.
Law, Chinese administration of, 68; sources of, enforced in American courts, 48 *et seq.*
Leased Areas, 228 *et seq.*
Lee, Higginson and Co. Loan, 508.
Legation Quarter at Peking, 219.
Liaotung Peninsula, lease of, 236.
Li, C. C., case of, 66.
Li Hung-chang-Lobanoff Treaty, 291.
Likin, 120 *et seq.*
Lin Tse-su, Commissioner, 464.
Loans, Chinese, 483 *et seq.*; Franco-Russian of 1895, 488; Anglo-German of 1896, 490; Anglo-German of 1898, 491; Boxer Indemnities, 493; Currency of 1911, 494; Crisp, 497; Six Power Consortium, 499; Reorganization of 1913, 502; Belgian of 1912, 506; Austrian of 1912, 507; Arnhold, Karberg & Co., 507; Lee, Higginson & Co. of 1916, 508; Chicago Bank of 1916, 508; Japanese, 1917-1919, 509; Industrial of 1913, 520; Banque Industrielle of 1914, 520; Kirin Mining and Forest of 1918, 521; War Participation of 1918, 522; Telegraph of 1918, 523; Plague Prevention of 1918, 523; Siems-Carey Concessions, 562; Shantung Canal Improvement, 566; Huai River Conservancy, 566. See Railway Loans.
Lobanoff-Li Hung-chang Treaty of Alliance, 291.
Lobingier, Judge, suggestion as to Chinese Appellate Court, 59; quoted, 51.
Lo-ti chuan, 129.
Lungkow, landing of Japanese troops at, 382.

Macao, annexed to Portugal, 268.
MacCartney Mission, 102.
Macdonald & Anderson, case of, 46 n.
Mackay Treaty, 108, 109, 131.
MacMurray, J. V. A., quoted, 413, 484 n.
Manchuria, Japanese police boxes in, 82; trade between, and Korea, 148; landholding in, 196; extent and status of, 216; Japanese in, 310 *et seq.*; new consortium and, 516. See South Manchuria, Chinese Eastern Railway, Twenty-One Demands.
Manufacturing in China by foreigners, 111.
Maritime Customs, receipts of pledged, 112; administration of 135 *et seq.*; at Tsingtao, 383.
Merchants, foreign, right of, in China, 110 *et seq.*
Military Agreement of 1911, Sino-Japanese, 422.
Millard, T. F., quoted, 354, 431 n., 449 n.

Mines, in Yunnan, Kwangsi and Kwangtung, 277; in Manchuria, 334, 344, 354, 356; in Shantung, 376.
Mining corporations, 185.
Mirs Bay, lease of, 239.
Missionaries, landholdings by, 193; special rights of, 197 *et seq.*; Japanese ask for right of propaganda, 420.
Mixed Courts, 51 *et seq.*; reform of, 67 *et seq.* See Shanghai Mixed Courts.
Mongolia, 451 *et seq.*, 516. See Eastern Inner Mongolia; Twenty-One Demands.
Monroe Doctrine, Japan's Asiatic, 442.
Morse, H. B., quoted, 26, 55, 113, 121, 134, 153 n., 157 n., 204, 205 n., 218, 223, 225, 230, 464, 467 n., cited, 13 n., 17, 135 n., 139 n., 228.
Most Favored Nation Clause, 8 *et seq.*; U. S. doctrine of, 9; provision of "Declaration" of 1843, 109 n.
Mukden, Japanese political jurisdiction in, 309.
Myer's General History. See Copyright.

Nanking, Treaty of, 19, 103 *et seq.*, 464.
Nanning, railway to Pese, 277.
Native Customs, 154 *et seq.*
Navigation. See Inland Navigation.
Neutralization of Manchurian Railways, Knox's plan for, 316 *et seq.*
Newchwang, customs at, 147.
Nganking, 115 n.
Ningpo, treaty port, 103.

O'Connor Convention, 267.
Okuma, Count, message to American people, 381.
Open Door, Secretary Hay's circular, 245 *et seq.*; reaffirmations of, by the Powers, 251 *et seq.*; treaties affirming, 253 *et seq.*; Root-Takahira Agreement, 257; Anglo-Japanese Alliance, 258; special interests and, 259.
Opium, 463 *et seq.*; American trade, 468; Anglo-Chinese Agreement of 1907, 470; International Shanghai Commission, 471; Hague Conferences, 473 *et seq.*; Versailles Treaty, 478; Combines, 473; smuggling by Japanese, 480.
Opium War, 19, 102.
Overlach, quoted, 260, 280, 286, 296.

Pakhoi, railroad to, 279.
Passports, for interior, 108.
Patent Rights, 169 *et seq.*
Pauling & Co., loan agreements with, 560.
Peace Conference at Paris, 396 *et seq.*
Peace Treaty of Versailles, provisions relating to China, 401 *et seq.*; China refuses to sign, 405.
Peking, establishment of diplomatic corps at, 108; not a treaty port, 117; Legation Quarter at, 219.
Peking-Hankow Railway, 282, 535.
Peking-Kalgan Railway, 531.
Peking-Mukden Railway, 526.
Peking-Siuyuan Railway. See Peking-Kalgan Railway.
Peking Syndicate Railway, 559.
Pienlo Railway, 538.
Piggott, Sir F., cited, 13 n.
Police boxes, Japanese, 80 *et seq.*
Port Arthur. See Liaotung Peninsula.
Port Arthur-Harbin Railway, 297.
Ports, foreign surveys of, 167.
Ports of Call, 115.

Portsmouth Treaty, affirms open door, 256; provisions of, 303, 310.
Portugal, annexes Macao, 268.
Poshan Coal Fields, 372, 376.
Post Office, Chinese, 137, 156 *et seq.*; foreign, 157.
Protégés, Levant system of, not recognized in China, 24.

Railways, Antung-Mukden, 312; Chinchow-Aigun, 327; Chinchow-Tsitsihar, 318; Chefoo-Weihsien, 375; Dongdang-Lungchou, 277; Hailung-Kirin, 358; Hsinmintun-Fakumen, 313; Hsinmintun-Mukden, 355; Jehol-Taonanfu, 358; Kaiyuan-Hailungchen, 358; Kiaochow-Tsinanfu, 371, 374; Kirin-Changchun, 355; Kirin-Hueining, 362; Koami-Ichowfu, 374, 393; Laokai-Yunnanfu, 280; Nanning-Pese, 277; Port Arthur-Harbin, 297; Shanhaikuan-Newchwang, 283 n.; Ssupingkai-Taonanfu, 358; Tonking-Yunnanfu, 278; Kuangchouwang-Onpu, 279; Tsinan-Peking-Hankow, 374; Tsining-Kaifengfu, 375; Tsinanfu-Shuntehfu, 375, 393. See Railway Loans.
Railway guards, 297.
Railway Loans, control conditions, 524; Canton-Hankow, 549; Canton-Kowloon, 539; Chengtingfu-Taiyuanfu, 537; Hukuang Loan, 550 *et seq.*; Peking-Kalgan, 531; Peking-Mukden, 526; Peking Syndicate or Tao-Ching, 559; Peking-Hankow, 535; Pienlo, 538; Regulations of 1898, 538; Shanghai-Hangchow-Ningpo, 547; Shanghai-Nanking, 532; Shanghai-Woosung, 526; Shasi-Shingyi, 560; Siems-Carey, 562.
Rea, G. B., quoted, 340, 565 n.
Real Estate, law applied in extra-territorial courts, 46 *et seq.*
Reorganization Loan of 1913, 502.
Residential Areas at Treaty Ports, 208 *et seq.*
Richards & Richards, case of, 34 n.
Root-Takahira Agreement, 257, 315, 435.
Ross, *In re*, quoted, 34.
Russia, claim upon Kiaochow, 231; agreement of 1899 with Great Britain, 283; frontier trade with China, 148; early treaties with China, 13 n., 102 n.; lease of Liaotung Peninsula, 236.
Russian Ambassador to Japan, letters of, quoted, 445.
Russian Sphere of Interest, 286 *et seq.* See Manchuria; Chinese Eastern Railway.
Russo-Chinese Agreement of 1899, 322.
Russo-Asiatic Bank, 296. See Russo-Chinese Bank.
Russo-Chinese Bank, 293, 396.
Russo-Japanese Agreement of 1907, 314.
Russo-Japanese Treaty of July 4, 1910, 328.
Russo-Japanese Treaty of July 3, 1916, 350; secret military alliance, 352.

Salt, importation of, prohibited, 120; administration of tax to be reorganized, 504.
Sanmen Bay, lease of, asked by Italy, 242.
Sinkiang, 462.
September, 1918, agreements, 393.
Settlements, at Treaty Ports, 113, 208 *et seq.*; Chinese sovereignty reserved, 211; classes of, 217.
Seward, G. F., quoted, 42, 68.

Shanhaikuan-Newchwang Railway, 283 n.
Shanghai, International Mixed Court at, 55 *et seq.;* treaty port, 103; landholding in, 210; settlements at, 225.
Shanghai - Hangchow - Ningpo Railway, 547.
Shanghai-Nanking Railway, 532.
Shanghai Opium Commission, 471.
Shanghai Tariff Revision Commission, 118.
Shanghai-Woosung Railway, 526.
Shantung, German rights in, 371 *et seq.;* mining rights in, 376; commercial and industrial rights in, 377; Japan's position in, 380 *et seq.;* Japanese demands of 1915 and resulting treaty and notes, 386 *et seq.;* secret agreements of 1917, 397; President Wilson position regarding, 400; Versailles Peace Treaty, 401; Japan's promise to restore, to China, 406.
Shantung Canal Improvement Loan, 566.
Shantung Eisenbahn Gesellschaft, 372.
Shantung Railway Company, 376.
Shasi-Shingyi Railway, 560.
Shimonoseki Treaty, 110.
Siems-Carey Concessions, 562.
Sikkim Convention, 459.
Sino-Japanese Treaty of December 22, 1905, 311, 312.
Special Interests, 259 *et seq.;* Japan's, in China, 429 *et seq.;* the new Consortium, 515.
Spheres of Interest, 267 *et seq.;* defined, 270; implications of, 273 *et seq.*
South Manchuria, foreign rights in, 113.
South Manchuria Railway, 364 *et seq.*
Sovereignty, China's guaranteed, 261.
Ssupingkai - Chenchiatun Railway, 360.
Stamp Taxes, 130.
Standard Oil, proclamation protecting registered brands of, 175 n.
Straight, Willard, quoted, 358.
Supplementary Treaty of 1843, 20, 110.
Survey, of Chinese ports by foreign war vessels, 167.

Taft, President, and the Hukuang Loan, 550.
Takahira, understanding with Root, 315.
Talienman. See Dairen; Liaotung Peninsula.
Tao-Ching Railway, 559.
Tariff. See Customs.
Territorial Integrity of China Guaranteed, 261.
Tibet, 459 *et seq.*
Tientsin, landholding at, 194; garrisons at, 222; concessions at, 223.
Tientsin Treaties, 22, 107, 110.
Tientsin-Chinkiang Railway. See Tientsin Pukow Railway.
Tientsin-Pukow Railway, 541.
Tong, Hollington K., cited, 64 n.
Tonking, railway to Yunnanfu, 278.
Trademarks, 169 *et seq.*
Transit Taxes, 105, 120 *et seq.* See Likin.
Trans-Siberian Railway. See Chinese Eastern Railway.
Treaty Ports, 103, 110, 112 *et seq.*
Tsingtao, customs at, 141 *et seq.*, 283; Japanese concessions at, 391.
Turkestan, 462.
Twenty-One Demands, police boxes, 82; Manchuria, 330; Shantung, 386; Fukien, 411; Mongolia, 457; Group V, 418 *et seq.*

Tyau, M. T. Z., quoted, 116; cited, 11, 13 n., 115 n.

Uchida, Viscount, version of Shantung agreement corrected by President Wilson, 407.
United States, treaty of 1844, 20.
United States Court for China, 31 *et seq.*; text of law establishing, 96 *et seq.*

Vaseline Case, 176.
Villalobos, American gunboat, 167.

Wade, Thomas, 136.
Waichow, 115 n.
Wanhsien, 115 n.
War, declared by China against Germany, effect of, on treaties, 311.
War Participation Loan, 395.
Warships, foreign, on inland waters, 166.
Weale, Putnam, quoted, 5, 420; cited, 87, 350 n.
Weihaiwei, lease of, 240, 378.
Williams, E. T., quoted, 451.
Wilson, President, position regarding Shantung, 400; corrects Viscount Uchida, 407.
Woosung River, navigation on, 110.
Wu, Dr. C. C., quoted, 87.

Yangtse River, navigation on, 108, 110, 161 *et seq.*; ports of call on, 115; basin of, within British sphere, 281; Twenty-One Demands and, 414.
Yengtai Coal Mines, 367.
Yochow, settlement at, 218.
Younghusband, expedition of, 460.
Yunnan, mines in, 276.
Yunnanfu, railway to Tonking, 278; railway to Laokai, 280.

DATE DUE

DOMINICAN COLLEGE LIBRARY
JX1570.Z7 J4
Willoughby/Foreign rights and interests
3 3645 00052233 7

Jol. A J.
336
Yo6

DS740.4 .W54 1920
Willoughby, Westel Woodbury,
1867-1945.
Foreign rights and interests
in China

Dominican College Library
San Rafael, California